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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1208.

THE SYRACUSE WATER COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF SYRACUSE AND THE CENTRAL CITY WATER WORKS COMPANY AND THE CITY OF SYRACUSE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED JULY 7, 1890.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the general term of the supreme court in and for the fourth department of the State of New York, Greeting:

Because in the record and proceedings and also in the rendition of judgments on appeal which are in the said supreme court of the State of New York, before you or some of you, the proceedings and records of which have been remitted thereby for judgment and execution by the judges of the court of appeals of the State of New York, of the second division of said court, being the highest court of law or equity of said State in which a decision could be had in the said suits of The Syracuse Water Company against The City of Syracuse and Syracuse Water Company against The City of Syracuse and The Central City Water Works Company, in which said court of appeals the said Syracuse Water Company was appellant in both of said actions and said City of Syracuse in one action and said City of Syracuse and Central City Water Works Company in the other were respondents, said actions having been tried together and the same proofs and record made in each, wherein was drawn in question the validity of certain statutes of the State of New York alleged to authorize the city of Syracuse to supply itself with water by or in other ways than by taking it from the appellant and authorizing said city to grant a franchise to other persons or corporations than the appellant to supply said city and its inhabitants with water, and also certain other statutes of said State alleged to authorize said Central City Water Works Company to enter into a contract with said city of Syracuse to supply it with water for municipal purposes,

b and to exercise the franchise of supplying said city and its inhabitants with water, under and by virtue of which several statutes said city of Syracuse has granted to said Central City Water Works Company a franchise to supply said city and its inhabitants with water and entered into a contract with said Central City Water Works Company to take water from it for municipal purposes for the period of twenty years, upon the grounds that said several statutes of the State of New York were each and every of them repugnant to the provisions of section 10, article 1, of the Constitution of the United States, that no State shall pass any law impairing the obligations of a contract, and also to the provisions of article 5 of the first amendment to said Constitution, that no person shall be deprived of property without due process of law, and that private property shall not be taken for public use without just compensation, and the decision of said court of appeals was in favor of the validity of said several statutes, a manifest error hath happened, to the great damage of said Syracuse Water Company, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things con-

cerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, 1890, in the said Supreme Court to be then and there held, that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

c Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, the 10th day of March, in the year of our Lord one thousand eight hundred and ninety.

[L. S.] W. S. DOOLITTLE,
Clerk of the Circuit Court of the United States Court for the Northern District of New York.

Allowed by—
WM. C. RUGER,
Chief Judge of the Court of Appeals of the State of New York.

WM. G. TRACY,
Attorneys for the Above Plaintiff in Error, Jerry Rescue Block, Syracuse, N. Y.

(Endorsed:) Filed M'ch 11, 1890.

d [Endorsed:] Supreme Court of the United States. Syracuse Water Company, plaintiff in error, ag't The City of Syracuse, defendant in error. Syracuse Water Company, pl'ff in error, ag't The City of Syracuse & The Central City Water Works Company, def'ts in error. Writ of error. Wm. G. Tracy, att'y for pl'ff in error, Jerry Rescue Block, Syracuse, N. Y. Copy.

e Supreme Court of the United States.

THE SYRACUSE WATER COMPANY, Plaintiff in Error,
vs.
THE CITY OF SYRACUSE, Defendant in Error.

THE SYRACUSE WATER COMPANY, Plaintiff in Error,
vs.
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY, Defendants in Error.

STATE OF NEW YORK,
County of Onondaga, } *ss:*

I, George G. Cotton, clerk of the county of Onondaga, New York, and of the supreme court of the State of New York, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered 1 to 440, inclusive, contain a true and complete transcript of the records and proceedings had in said supreme court of the State of New York and in the court of appeals of the State of New York, the records of which were duly

remitted to said supreme court in the above-entitled actions, in which said actions The Syracuse Water Company was the plaintiff in error and The City of Syracuse and The Central City Water Works Company were defendants in error, as the same remain of record and on file in the office of the clerk of the county of Onondaga and of said supreme court.

In testimony whereof I have caused the seal of the said supreme court to be hereunto affixed, at the city of Syracuse, in the county of Onondaga and State of New York, this 23rd day of June, in the year of our Lord one thousand eight hundred and ninety.

[Seal Onondaga County.]

GEO. G. COTTON,
Clerk of Onondaga County, N. Y., and of the Supreme Court of the State of New York.

f *Memorandum of Clerk.*

On the 14th day of March, 1890, there were filed in the office of the clerk of the county of Onondaga, N. Y., three copies of the foregoing writ of error. One was addressed to defendants in error by an endorsement thereon as follows: Copy for defendant in error. One was addressed to Louis Marshall, attorney for Central City Water Works Company, by endorsement thereon as follows: Copy for Louis Marshall, attorney for Central City Water Works Company, defendant in error. One was thus addressed: To E. S. Jenney, attorney for the city of Syracuse, by endorsement thereon as follows: Copy of writ for E. S. Jenney, attorney for City of Syracuse, defendant in error.

g Court of Appeals.

THE SYRACUSE WATER COMPANY, Appellant,
against
THE CITY OF SYRACUSE, Respondent.

THE SYRACUSE WATER COMPANY, Appellant,
against
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY, Respondents.

Appeal from two judgments.

Forbes, Brown & Tracy, appellant's attorneys, Syracuse, N. Y.; E. S. Jenney, attorney for respondent, City of Syracuse; Louis Marshall, attorney for respondent, Central City Water Works Company.

h Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 8th day of October, in the year of our Lord one

thousand eight hundred and eighty-nine, before the judges of said court.

Witness the Hon. William C. Ruger, chief judge, presiding.

GORHAM PARKS, *Clerk.*

Remittitur, Oct. 8th, 1889.

THE SYRACUSE WATER COMPANY, App'l'nt,
ag'st
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY, Resp'd'ts.

Be it remembered that on the 14th day of July, in the year of our Lord one thousand eight hundred and eighty-six, The Syracuse Water Company, the appellant in this action, came here into the court of appeals, by Forbes, Brown & Tracy, its attorneys, and filed in the said court a notice of appeal and return thereto from
i the judgment of the general term of the supreme court of the State of New York, and The City of Syracuse and The Central City Water Works Co., the respondents in said action, afterwards appeared in said court of appeals by E. S. Jenney and Louis Marshall, their respective attorneys; which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, having heard this cause argued by Messrs. Geo. F. Comstock and Wm. G. Tracy, of counsel for the appellant, and by Mr. Louis Marshall, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment of the supreme court appealed from in this action be in all things affirmed; and it was further ordered and adjudged that the respondent recover against the appellant costs of appeal to this court.

And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law.

Therefore it is considered that the said judgment be in all things affirmed, with costs as aforesaid, and stand in full force, strength, and effect.

j And hereupon, as well as the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court, before the justices thereof, &c.

GORHAM PARKS,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *Oct.* 8, 1889.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

[L. S.]

GORHAM PARKS, *Clerk.*

k

Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 8th day of October, in the year of our Lord one thousand eight hundred and eighty-nine, before the judges of said court.

Witness the Hon. William C. Ruger, chief judge, presiding.

GORHAM PARKS, *Clerk.*

Remittitur, Oct 8th, 1889.

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ag'st
THE CITY OF SYRACUSE, Resp'd't.

Be it remembered that on the 14th day of July, in the year of our Lord one thousand eight hundred and eighty-six, The Syracuse Water Company, the appellant in this action, came here into the court of appeals, by Forbes, Brown & Tracy, its attorneys, and filed in the said court a notice of appeal and return thereto from the judgment of the general term of the supreme court of the State of New York, and The City of Syracuse, the respondent in said action, afterwards appeared in said court of appeals, by E. S. Jenney,

l its attorney; which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, having heard this cause argued by Messrs. George F. Comstock and Wm. G. Tracy, of counsel for the appellant, and by Mr. Louis Marshall, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the supreme court appealed from in this action be in all things affirmed; and it was further ordered and adjudged that the respondent recover against the appellant costs of appeal to this court.

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And hereupon, as well as the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises, are by the said court of appeals remitted into

the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court, before the justices thereof, &c.

m GORHAM PARKS,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *Oct.* 8, 1889.

[L. S.] I hereby certify that the preceding record contains a correct transcript of the proceedings in said action of the court of appeals, with the papers originally filed therein attached thereto.

GORHAM PARKS, *Clerk.*

1 Supreme Court.

SYRACUSE WATER WORKS COMPANY
against
CITY OF SYRACUSE.

SYRACUSE WATER WORKS COMPANY
against
CITY OF SYRACUSE and CENTRAL CITY WATER WORKS CO.

The issues joined in both the above actions came on for trial at adjourned Onondaga special term, July 1st, 1885, before Hon. P. C. Williams, J. S. C.

G. A. Forbes and W. G. Tracy for plaintiff in each action; E. S. Jenney for defendant, City of Syracuse, in each action; Louis Marshall for defendant, Central City Water Works Co.

2 Stipulated that the two cases are to be tried together as one, the evidence to be used in each case as the same may be applicable.

Plaintiff offered in evidence, first, chapter 176 of the laws of 1821, passed March 27th, 1821; hereto annexed.

Plaintiff next offered in evidence chapter 124 of the laws of 1825, passed April 13th, 1825, calling the court's attention particularly to section 11; hereto annexed.

Plaintiff next offered in evidence chapter 235 of the laws of 1829, passed April 23d, 1829, calling attention particularly to section 2 of the act; hereto annexed.

Plaintiff next offered in evidence chapter 151 of the laws of 1834, passed April 22d, 1834, calling especial attention to section 9; hereto annexed.

Plaintiff next offered in evidence chapter 108 of the laws of 1842, passed March 29th, 1842; hereto annexed.

Plaintiff next offered in evidence from the laws of 1847, chapter 475, passed December 14th, 1847, being the charter of the city of Syracuse, and calling attention to title 3, section 7, subdivision 31; hereto annexed.

Plaintiff next offered in evidence title 10, the whole of section 12; hereto annexed.

Plaintiff next offered in evidence section 18 of same title, being the declaratory part, &c.; hereto annexed.

Plaintiff next offered in evidence chapter 224 of the laws
3 of 1849, entitled "An act to incorporate the Syracuse City Water Works Company," passed April 5th, 1849; hereto annexed.

Plaintiff next offered in evidence chapter 104 of the laws of 1851, entitled "An act to amend an act entitled An act to incorporate the Syracuse City Water Works Company," passed April 5th, 1849; hereto annexed.

Plaintiff next introduced in evidence chapter 35 of the laws of 1853, passed March 22d, 1853, and counsel states that at the bottom of section 2 instead of "provided" it should read "prescribed;" hereto annexed.

Plaintiff next introduced in evidence from the laws of 1855 chapter 16, "An act to amend an act to incorporate the Syracuse City Water Works Company," passed April 5th, 1849, passed February 6th, 1855; hereto annexed.

Plaintiff's counsel next introduced in evidence the revised charter of 1857 of the city of Syracuse, edition of 1877, and called attention of the court particularly to title 4, section 4, subdivision 2; also title 5, section 2; also section 12 of the same title; also section 1, title 6; hereto annexed.

Either party may refer to the original charter upon any stage of the appeal.

Plaintiff next offered in evidence from the laws of 1864 chapter 104, passed March 31st, 1864, providing for the increase of the capital stock to an amount not exceeding $300,000; hereto annexed.

4 Plaintiff next offered in evidence laws of 1855, chapter 71, passed March 3d, 1865; hereto annexed.

Next offered in evidence laws of 1877, chapter 36, passed March 6th, 1877; hereto annexed.

Plaintiff also offered in evidence chapter 370 of the laws of 1879, passed May 26th, 1879; hereto annexed.

Plaintiff next offered in evidence the revised charter of the city of Syracuse as amended May 27th, 1885, passed February 21st, 1885, and called the attention of the court to sec. 22, subdivision 2, subdivision 7, title 5, section 41, of the same act; also section 48; also title 7; also section 104; hereto annexed.

Either party may refer to the original charter on the hearing of any stage of this appeal.

Plaintiff next introduced in evidence chapter 545 of the laws of 1870; hereto annexed.

PLAINTIFF'S COUNSEL: It is admitted by the answer in this case that the plaintiff is a domestic corporation duly and regularly organized and incorporated under the laws of the State of New York and doing business and having its principal place of business at the

city of Syracuse under the name, style, and organization of the Syracuse Water Company.

It is also admitted by the answer that the city of Syracuse is a domestic municipal corporation organized under chapter 475
5 of the laws of 1847, passed December 14th, 1847, and the several amendatory acts in addition thereto, and that the mayor and common council are the acting municipal officers of said city and were at the time of the commencement of this action and for a long time had been exercising the duties pertaining to their offices.

It is also admitted in the other case—in number two—that the defendant, The Central City Water Works Company, is a domestic corporation, and that at the time of the commencement of this action against them they had a place of business in the city of Syracuse, and that they had commenced making their surveys and taking steps to carry out and into effect the grant or contract with the city of Syracuse to furnish water, and that for constructing their works for the purpose of supplying the city and its inhabitants with water they had entered upon the enjoyment and exercise of the privileges conferred by franchise which they got from the grant of March 23d, 1885, from the city, and that they had actually commenced their surveys and were making preparations to lay down or construct their works, and also that they had entered upon the performance of their contract with the city under the resolution and grant set up in the answer.

Mr. MARSHALL: There is no contract—nothing further than
6 the resolution of March 23d, followed by the acceptance of the resolution by the water company on the 4th of April, 1885. It was accepted in writing under the seal of the corporation. That contract required them to enter upon the performance of their duties within three months under such acceptance.

It was here admitted by the defendants that at the time of the commencement of the action they were actually attempting to carry out and claiming the right to carry out and exercise the powers and privileges which they claimed to have been granted by the city to them under the resolution and acceptance referred to in the complaint and answer—under the power and authority, as they claimed, conferred by resolution and acceptance.

It is also here admitted that the resolution hereto annexed marked Exhibit 1 was passed by the common council of the city of Syracuse on the evening of the 23d day of March, 1885, and that immediately after its passage, on the same evening, said resolution was approved by the mayor in writing as follows: "And the accompanying resolution is hereby approved by me this 23d March, 1885, at 8.30 p. m.; Thos. Ryan, mayor;" and that such approval was made there in the common-council chamber and before the mayor left his seat during the meeting held by the common council on that evening, and before he left his seat during the meeting held by the common council on that evening.

7 Plaintiff's counsel next offered this resolution in evidence. Received and marked "Exhibit 1;" annexed.

Plaintiff's counsel next offered in evidence a certified copy of the resolution of the board of trustees of the village of Syracuse, passed May 27th, 1841, which reads as follows: "On motion, resolved that a deed be executed to Oliver Teall, pursuant to an act of the Legislature of the State of New York entitled 'An act to supply the village of Syracuse with wholesome water,' passed March 27th, 1821, and pursuant to the amendments to said act passed April 23, 1829, and April 22d, 1834.

"On motion, resolved that Thomas T. Davis be, and he is hereby, appointed a committee to make out the deed as directed in the above resolution. W. M. Clark, clerk." Received and marked "Exhibit 2."

Plaintiff next offered in evidence a resolution passed by the board of trustees of the village of Syracuse June 7th, 1841, which reads as follows: "Thomas T. Davis, the committee appointed under the resolution passed May 27th, 1841, to draft a deed and conveyance of certain water in the village of Syracuse to Oliver Teall, reported that the deed was ready; and, on motion, it was resolved that the president of the board of trustees be directed to execute said deed, and that the same be attested by the clerk.

8 "On motion, resolved that the clerk be, and he hereby is, directed to tender the deed mentioned in the last resolution to Oliver Teall. W. M. Clark, clerk." Received, marked "Exhibit 3."

Plaintiff next offered in evidence certified copy of deed, under date of the 8th day of June, A. D. 1841, executed by Hiram Putnam, the president of the board of trustees, under seal and attested by W. M. Clark, clerk, under the resolution above offered in evidence; acknowledged on the 9th day of June, 1841, before Johnson Hall, the county judge of the county courts of Onondaga county; recorded June 30th, 1842, at 6 o'clock p. m., in Book of Deeds 81, at page 231; Chas. T. Hicks, clerk of the county; being a deed from the inhabitants of the village of Syracuse to Oliver Teall. Read in evidence and marked "Exhibit 4;" annexed.

Plaintiff's counsel next offered in evidence deed dated June 8th, 1841; acknowledged June 9th before Johnson Hall, and approved by William M. Clark, as subscribing witness also, on the 23d of July, 1842; recorded in Book 81, page 320. Received in evidence and marked "Exhibit 5;" annexed.

Plaintiff next offered in evidence deed from Olive Teall to Ira Seymour, dated June 30th, 1842; acknowledged on the same day, and recorded in Onondaga county clerk's office June 30th, 1842, at 6 o'clock p. m., in Book of Deeds 81, at page 231; conveying

9 equal undivided one-third part of all the rights, privileges, and property granted and conveyed to said Oliver Teall by Daniel Elliott and wife and by the village of Syracuse. Received and marked "Exhibit 6;" annexed.

Plaintiff next offered in evidence deed from Ira Seymour and wife to Oliver Teall, dated the 11th day of July, 1843, acknowledged on the 13th day of July, 1843, and recorded July 21st, 1843, in Book 84 of Deeds, at page 74, conveying an equal undivided one-fourth

part of all the rights, privileges, and property which Ira Seymour purchased of said Teall in the year 1842, and refers to the deed executed by Teall to Seymour, Exhibit Six. Marked "Exhibit 7;" annexed.

Plaintiff offered in evidence a second deed from Ira Seymour to Oliver Teall, dated the first day of August, 1844, acknowledged on the 19th day of March, 1845, recorded on the 21st day of March, 1845, in Book Number 87 of Deeds, at page 272, conveying an equal undivided one-fourth part of all the rights and privileges purchased of Teall in 1842 by the deed Exhibit Six. Marked "Exhibit 8;" annexed.

Plaintiff next offered in evidence a power of attorney from Ira Seymour to Amos Benedict, dated the 15th day of February, 1849, under seal, and acknowledged on the 15th day of February, 1849, recorded the 6th day of July, 1849, in Book G of Miscellaneous Records, at page 293, empowering him to convey all the right
10 and interest of Ira Seymour in the water works, referring to the deed received by him from Oliver Teall marked Exhibit Six. Marked "Exhibit 9;" annexed.

Plaintiff next offered in evidence a deed from Ira Seymour, by Amos Benedict, the attorney mentioned in the power of attorney above offered, to the Syracuse City Water Works Company, being this plaintiff by its former name, dated the 3d day of July, 1849, and acknowledged on the 3d day of July, 1849, with the consent also of Oliver Teall, which was also acknowledged on the same day, and was recorded on the 6th day of July, 1849, in Book 97 of Deeds, at page 367, covering one-sixth. Marked "Exhibit 10;" annexed.

Plaintiff next offered in evidence a deed from Oliver Teall to the Syracuse City Water Works Company, dated the 3d of July, 1849, acknowledged on the 3d day of July, 1849, and recorded in Book 97 of Deeds, at page 367, on the 6th day of July, 1849, covering a conveyance of five-sixths. Marked "Exhibit 11;" annexed.

ELIAS W. LEAVENWORTH, duly sworn for plaintiff in each case, testified:

I am in my eighty-second year. I have been a resident of the village and city of Syracuse since 1827. I was president of the village of Syracuse in the years 1838, 1839, and 1840 until the
11 spring of 1841, and in the years 1846 and 1847 until the spring of 1848, and I was mayor of the city again in 1849. I was mayor of the city after that time—in 1859. I recollect the drafting and preparation of the act incorporating the city of Syracuse, and also the act incorporating the Syracuse City Water Works Company. I participated in the drafting of those two acts. I can't say that I had anything to do with the original drafting of the charter of the water company as it was first drawn, but I had in settling the terms of it. I think that must have been in the year—either the latter part of 1847 or the fore part of 1848. I recollect that mainly because I was at that time the president of the village and Gardner Lawrence was one of the trustees at that time, and I know that I

had frequent conferences with him in regard to the settlement of the terms of the charter of the water company.

Q. What do you know about the charter of the Syracuse Water Company, before it was passed by the Legislature, having been submitted to the common council of the city of Syracuse?

A. I know that the charter which was originally drawn by the water company was not satisfactory to the corporation of the city, and that there were several changes made in it by the corporation or by members of the corporation. Mr. Gardner Lawrence was the most active man. He was a lawyer, and he represented the common council in that matter and suggested various changes in it, which were made. How many of those conferences I have knowledge of I could not tell—I could not recollect. It is almost forty years ago. I only recollect that the common council
12 were not satisfied with the terms of the charter as it was drawn. I recollect the fact that a conference was actually had and the terms were agreed upon. I recollect that there were important changes made in the charter at the suggestion of the common council.

Q. Do you recollect what particular change was made and submitted to the common council?

A. I would not swear with absolute certainty in regard to that, but my recollection is that the changes were in regard to the city's having the right to buy—the last section, I think it is, of the charter, and the section in regard to their having the right to take possession if the company did not furnish the water within a certain time. I think there were two of them, but I could not recollect whether those were all or not. I would not swear positively those were the ones put in, but I think they were. Those two were subjects of discussion, according to my recollection. After the conferences between the water company and the city of Syracuse the act was finally sent to the Legislature for its adoption. It went into effect actually in 1849, I think, because in 1850 they were engaged in laying down pipe—the company was. Up to that time the city of Syracuse had been supplied with water by Captain Teall, with ordinary pump logs—wooden logs—for a long time. Capt. Teall had supplied the city with water to my knowledge before that time in the manner in which he had supplied it. I could not speak with absolute confidence; I should think perhaps a half a dozen years and perhaps longer; I should think most of the years after 1840 or 1841 or 1842. That is my recollection. The Capt. Teall I speak of is the Oliver Teall referred to in these
13 conveyances. At the time of the incorporation of the plaintiff's company he was then actually supplying the city with water in the manner which I have described. His pipes were laid down all about the town. In 1840 the population of the city was about 6,000. About the time of the incorporation of this company the census of 1850 showed it was 23,000, I think, but I never believed it. I thought it was less than that. The census of 1855 did not show any such increase as it ought to have done. What the population was at that time I haven't any means of

recollecting. I always imagined the population was about 20,000. My judgment is about 20,000 at that time, reasoning from the census of 1850 and that of 1855. How soon after the organization of this new water company I became connected with the company personally I have not looked to see, but my recollection is it was about 1851 or 1852; may have been in 1850, but I think not. I then became a director of the company; about that time, as near as I can recollect. From that time forward, down to the present time, I have been continuously in the board of directors. I believe I was elected president in 1862, if I recollect right, and continued to be elected president down to the election of General Bruce the last election. General Dwight H. Bruce was elected this spring or summer—in the month of June, I think—one of the editors of the Syracuse Journal. He is the president of the Syracuse Water Company as it is now incorporated. I recollect and was acquainted with the original incorporators and directors of that company; Oliver Teall was one; John Wilkinson was one; both are dead; Hamilton White was one; he is dead. I am not
14 sure who else there was. I think Ira Seymour was one for a short time. I know Robert Furman is dead. Ira Seymour is living. What the age and condition of Ira Seymour at this time is I only know from information. I have not seen him for a number of years. I think he has not been out much. I understand he is confined to his house, very feeble. He must be between 85 and 90, I think. He is considerably older than I am.

Q. From the time you commenced your connection with this company as a director, from that time down to the present time, you may state in what manner you have extended the service of this water company. You may first speak about the building of the reservoirs and the extension of the pipe from year to year.

A. When I was elected a director the corporation had bought certain rights to water in the Stolp hollow, about two miles southwest from here, and had built a stone aqueduct about a mile long and two feet square to bring water into a reservoir on the hill about a mile southwest of here, which is something over a hundred feet above the city. They had also laid pipe or were laying a pipe from there—an iron pipe from there down to the center of the city, and other pipes around. I think they had a log at first, but they very soon—I think as early as when I was elected they were laying or had laid an iron pipe—a foot pipe—down through West Onondaga street into the center of the town and were laying iron pipes in different directions about the city. That was the first thing the new company did, but it was a few years before we found that that supply of water
15 in Stolp hollow was not sufficient to supply the town the year around fully. Then we bought the water of Harber brook, a stream that comes down from the west near the idiot asylum. We bought a mill there and bought the water, and brought it into the city. That supplied the deficiency for a time, but the water was found to be excessively hard and not very satisfactory, and we finally abandoned that, and we went to Onondaga hill, five miles from here, and bought quite a large tract of land there—I think, if I recollect

right, somewhere between fifteen and twenty acres—and built a reservoir that holds about 150,000,000 gallons of water for the purpose of furnishing us with what water we wanted in very dry times, and we laid a pipe from that reservoir down to another reservoir which we built above the first reservoir, on ground about 165 feet above the city—a reservoir that holds some seven or eight or nine millions of gallons. The first reservoir, I think, only holds about one and a half or two millions of gallons. That continued to supply the city tolerably well for some years, but I think that as much as fifteen years ago—I couldn't tell precisely when—we found that supply was not sufficient for the city, and then we bought ten acres of land where our present pump works are, and built pump works there, and got our water from the Onondaga creek. We have supplied the city mainly from the Onondaga creek and from the Stolp hollow and from this reservoir at Onondaga hill down to the present time. We were obliged, we thought, to have a larger reservoir for holding our water than the old million and a half reservoir, and we built a very large reservoir and bought some thirty or forty acres
16 of land right west of the pump-house on the hill, and built a reservoir there which will hold something like a hundred millions of gallons when it is full.

Q. About as nearly as you can estimate it, about what is the acreage of the plant owned by the Syracuse Water Company at the present time?

A. Well, we have at Onondaga hill, according to my recollection, I would not be absolutely positive, but it seems to me it is about seventeen or eighteen acres at Onondaga hill. We have ten acres down on the Onondaga creek, and my impression is the last purchase we made is between thirty and forty acres, where the big reservoir is and where we have laid our large pipes. That makes the entire plant some sixty acres, more or less. We have been in possession of that and in occupation, supplying the city of Syracuse, for different periods of time. We bought the land in the Stolp hollow. I don't count that land, because I don't know how much land we owned there, and I am not sure we owned the land. I am not quite certain we owned anything except the water. But without counting anything at Stolp hollow, we bought the land at Onondaga hill about 1860 or 1861—that is, I think, about seventeen acres. That was the first large purchase. The last purchase was the land on Onondaga creek. We purchased that some twelve or fifteen years ago—all of fifteen, I guess, and perhaps more. No, sir, the last purchase of thirty or forty acres was made five or six years ago. We bought some of John Stolp about 1850; not a very large amount, but I should think two or three acres. The water works are located southwest of the city, or west of south; not southwest, but
17 west of south, and I should think about a mile and a half from the center of the city.

Q. What quantity of water, as your pipes are now laid, are you able to supply the city with per day?

A. Ten millions of gallons.

Q. What amount of water is supplied by plaintiff to the city and its inhabitants?

A. It varies, of course, at different seasons of the year; but we may say about four millions of gallons daily; sometimes less and sometimes more. We have supplied all that has been asked or required by the city or inhabitants, unless sometimes a person may have applied where we had no pipes, and where we could not afford to lay a pipe for the small amount of water that was wanted. What the actual consideration of the purchase from Oliver Teall was I only know from what was said at the time and from the amount of stock that was issued. I was a director of the company very soon after this thing occurred, but I was not at the very time it was done. What I knew I knew from the parties to the contract, Capt. Teall and Mr. Wilkinson and Mr. White, and from the amount of stock that was issued for the purpose of paying it. I was not in the board when the amount of stock was issued for paying up. I guess the stock was issued before I was in the board, but I knew what the amount of stock was which was issued originally for the purpose of paying it. I don't know what was paid to Teall, except from what the parties themselves said. I do know the amount of stock that was issued to him. The original amount of stock issued by the company to him was $40,000, according to my recollection. I
18 simply speak from memory as to the amount of stock. I would not be absolutely certain I am exactly right, but I think it was not far from that.

Q. State what you know about the common council having been consulted from time to time, the common council as a common council, with reference to this service of the water works.

A. I have no particular recollection of ever going with any member of the common council to inspect the works. I have had conferences with the common council, as president of the water company, with the common council in session. During all the time that I was president, from time to time I had conferences with the common council on various subjects, but I could not state now what took place at those meetings. More often they were in regard to the amount that should be paid by the common council to the corporation for the water. It was on the subject of supplying the city and laying the pipes—both of those subjects, often. The mileage of pipe, the miles of pipe laid by this water company, the corporation of 1849, and subsequently, down to the present time, is something over forty miles. I answer with reference to that, that we have now laid forty miles of pipe now lying in the streets. That is not in addition to the replacing of pipes—that is, the whole extent I think of the pipe as it is now laid is something over forty miles, as it is now actually laid and doing service. Some of it has been laid twice over; pipes failed. I do not count that as additional pipe. It is exclusive of that which has been relaid; that is the extent of the present plant; that in-
19 cludes the service from the reservoir, all the pipe that we laid. The general character in size of the pipe throughout the city is—a large part of it is four inch, six inch, and eight inch. Of course, there is some ten-inch, some twelve-inch, and some two-foot

pipe. That service commencing on the west side extends in all directions about the city. We touch the south line of the city, I think, in five different places. We are on the west line of the city from Genesee street to the Onondaga line most of the distance, all the distance, or very near the west line all the distance. On the east line of the city we have two lines of pipes that reach to Beach street. Beach street is three or four streets beyond University avenue. That is easterly. Then we have also easterly a pipe that goes quite almost to the east line of any population—up to where the West Shore road have built their round house. We have another easterly pipe that goes to the top of James-street hill. On the north we have a pipe that goes on Salina street to Wolf street and then five blocks north on Wolf street. That goes right to the center of the old village of Salina, the last block but one before you get to the canal, and then goes north, and then the pipes are distributed through the heart of the city, upon all the streets in all directions. The height of our upper reservoir at Onondaga hill, I suppose, is between five and six hundred feet above the level of the Erie canal. We call it 600. I don't know that the altitude has ever been accurately taken. We count everything above the Erie canal. At the time of the commencement of this action the total amount expended in furnishing and securing this plant was between $725,000 and $730,000.

20 Q. You may state whether you did from time to time have contracts with the city with reference to supplying water; whether contracts were entered into.

A. Yes; we had contracts with the city, from a time very soon after the company was organized, for many years; down to what time I can hardly recollect. I should think for twenty years or more. There were also submissions to commissioners, a number of them, under the provisions of the charter; I should think about four times that we resorted to a commission. I would not be certain.

Q. When was the last contract with the city of Syracuse?

A. Four years ago; a contract.

Q. I mean the last contract which was actually made with the city.

A. I can't state when it was; I think more than twenty years ago, though, or as much as twenty.

Q. So for the last twenty years it has been under commission?

A. I could not state the precise time. During the whole of this time and down to the time of the commencement of this action and down to the present time the city has used and is using this water from our supplies. There has not been any time during the whole of that time when it has not used the water. During the whole of that time no one else has supplied water to the city or its inhabitants from anything except private wells. Ours has been the only supply during all of this time since the incorporation of the company.

Q. You may state generally the manner of that supply to the city itself.

21 A. We have supplied the city in many respects just as we have other parties—to the school-houses, city hall, and high school, &c.—by pipes, of course, connecting from the buildings with our main pipes; for fire purposes they have taken it through their hydrants. I am not sure about the exact number of hydrants they have established for the purpose of receiving and distributing this water; somewhere between 325 and 350, I should think. You ask me the mode in which we furnished them with water. They have used the water of late years for sprinkling the streets through contractors. They have also used water for watering troughs about the town; some fifteen or twenty of them, I think. They have furnished the contractors with water—the men that contract to sprinkle the streets. They advertise for proposals for sprinkling the streets on condition that they furnish the water, and the water is taken from the city hydrants, furnished by us with water. The city furnished the hydrants. We simply laid pipes for them and furnished the water during the whole of this time we have paid taxes as a company, assessed by the city, and also State and county taxes, and a corporation tax under the late law, assessing a direct tax to be paid to the State. The directors of the company individually are tax-payers—quite large tax-payers. The present directors and officers of present company are: Mr. Dwight Bruce is the president; Edwin H. Brown is the secretary and treasurer; the directors are William Brown Smith, A. C. Belden, Alfred A. Howlett, Hamilton White, Patrick Lynch, Alexander Davis, Dwight Bruce, myself, Mr. Jacob Crouse. There are nine directors now. All except Mr. Bruce
22 and Mr. Davis have been directors of the company for many years. Mr. Davis and Mr. Bruce were elected this spring. Mr. Davis has been a stockholder ever since the death of his father. Mr. Bruce is a recent stockholder. I was present at the time of the service of the summons and complaint in this action against the city above. I was then the president of the water company at that time. I could not state the time in the evening. The summons and complaint was served, I should think, between 8 and 9 o'clock. The papers were served on the mayor. The papers that were served were served on the mayor, and those that Mr. Beach served were served on the aldermen of the First, Second, Third, and Fourth wards, and those served by the young man on the other four aldermen between 8 and 9 o'clock, I should think.

Q. You may state whether the summons and complaint were served before any vote was taken or before any member of the common council had voted.

A. It was served before any vote was taken.

Q. Was it served before any member of the common council had actually voted on the resolution?

A. Yes; I think it was.

Mr. Listman was the second man that was called upon to vote, from the Second ward, and he held the papers in his hand at the time and refused to vote until——

Q. How immediately after the service of these papers on the mayor was the resolution passed and declared adopted?

A. It was taken as rapidly as it could be. The mayor called the name of each alderman, commencing with the First ward and
23 going through as fast as they could answer as he called them, and at the close of that calling the resolution was declared publicly there adopted. The mayor or clerk called the names of the aldermen. The clerk perhaps called them. The mayor ordered it to a vote. In fact, the clerk called the names after the mayor had ordered it to a vote. The clerk always calls them. I was there when the pen and ink were sent for and the resolution signed by the mayor. That was less than four minutes after the vote was actually declared passed and adopted, if he signed it at the time I saw him writing.

Cross-examined:

My connection with the Syracuse Water Company commenced in about the year 1851 or 1852. That is my recollection. I would not swear positively, but that is my recollection. In the conferences spoken of between the city and the water company the water company was represented by different persons at different times. As to the conferences before the passage of the act of 1849, with reference to the act of incorporation, I think Mr. Wilkinson had more to do with it than anybody else. The city was represented by Gardner Lawrence. He was a man that I recollect took the most active part. I could not say that others were not concerned; but he was a lawyer, and perhaps the only lawyer in the board.

Q. Your recollection is it was at the suggestion of the city that the last section of the act and the section which provides for the acquiring of the property in case the company should fail to supply water were inserted in the act?

24 A. That is my best recollection. I would not swear to either of those facts absolutely. I recollect that there were various changes made and conditions, and I think those were two of them. Ira Seymour has not been a stockholder in the company for many years. I say that my opinion is that Capt. Oliver Teall took his pay for the property which he transferred to the Syracuse Water Company in the stock of the company. I think so. At the time when he transferred this property to the company, how many miles of pipe there were I couldn't tell. He got his supply of water at that time from just above Lodi street, just east of what is now Fountain street. There is a stone well there now from which the water was obtained mostly. It was a spring; but I mean it is stoned up with a high wall about it. After the Syracuse Water Company was organized an entirely different source of supply was obtained immediately. We, however, continued to take water from there for quite a long time. The company does not still take water from there. We don't use it now. We have discontinued taking water from that source. We haven't taken it from there for many years. We first took water from Stolp hollow, from a spring there—several springs. What induced us to do that was that the supply of water furnished by the well at Lodi was insufficient to supply the wants of the company, and then the elevation did not give much pressure to the

water, and then from time to time, as necessity arose for an additional supply of water to meet the requirements of our customers, we acquired other sources of supply, added to our mains and to our reservoirs as occasion demanded. That is just what we have been doing. Our business has constantly increased from the time
25 of the organization of the company every year, I think, and therefore we have always required more water and additional pipe. The pipe which we have lying in the streets of the city does not reach all parts of the city. There is a considerable territory which is entirely without a supply of water. Some is above the elevation to which our water will go.

Q. How much of the city is above the elevation to which your water will go?

A. But a small part of the population.

Q. Which wards are they?

A. The Fourth ward and the Eighth ward; there is very little population in the Eighth ward beyond it.

Q. How is it about the Second ward?

A. Water goes, I guess, everywhere in the Second ward where they want it. There may be half a dozen or a dozen houses where it does not. Our water goes up James street to Highland street.

Q. There is a considerable territory beyond that, which is quite thickly populated, which is not supplied with water?

A. Yes; there are some two or three hundred people perhaps up there; there are not five hundred; it is a part of the city that is increasing and growing. In the Eighth ward there is a very little population above the water there; our water does not go further than Beach street and beyond that the city is growing—growing moderately.

Q. It is one of the wards in which the greatest improvement is being made and more buildings being erected than almost any other?

26 A. Yes; but they are within the limits of our pipe, the great bulk of them; very few of them are extending beyond the limits of our pipe. I don't know of many houses beyond those houses built by Judge Comstock, and those in the neighborhood of the university are in reach of our water; our pipes haven't ever been extended to all portions of the city where our water would reach; there are other portions besides these named, where our water would not go, where the water would go, but does not go because we haven't any pipes. Those portions of the city are not without protection from fire so far as our water is concerned.

Q. The city is unable to obtain any relief from your water?

A. Oh, yes; they do to a large extent. The fire department can reach a house that is not on a street where we have pipe; generally they can go two blocks if it is necessary; beyond those two blocks the city is without protection against fire. There are not a great many such blocks as that in the city; there are some. We have a chart in the office which would show the pipe. Some of the pipes that we have laid on the streets of the city are of sheet iron and cement. About how many miles of such pipe we have I couldn't tell

you. I haven't very much of an idea. I shouldn't think there was some ten miles of that pipe. I shouldn't think there was as much as that. I would not say there was not; my best impression is there was not as much. I should think there might be five or six or seven miles. That pipe is not as strong as iron pipes. Sometimes those pipes have burst. A short time ago we had one of those pipes
27 burst on the corner of Mulberry and Onondaga street. The iron pipes sometimes burst too.

Q. You had also one of those pipes burst on Clinton street a short time ago, so it prevented the fire department from getting a water supply from certain of the hydrants in that vicinity?

A. I don't know anything about that.

Mr. FORBES: We object to this as wholly incompetent and immaterial. In the first place, it is inadmissible under the pleadings; and, secondly, it is inadmissible under these statutes, because the matter is entirely and wholly under the control of the city and common council.

Mr. MARSHALL: We want to show the reasons why the people of the city of Syracuse clamored for relief against this company.

Mr. FORBES: That is immaterial entirely.

Objection overruled. Exception for plaintiff.

I remember the fire which destroyed the building of John Q. Smith on Clinton street a few days ago. I know there was such a fire. I did not know it was a fact that the fire department was unable for some time to get water on account of one of these bursted pipes in that vicinity. We do not very frequently have breakages in the pipes, and especially this sheet-iron and cement pipe—not very often; not quite often. I should think I had known of half a dozen of them or more; but then they might be without my knowing it. I should think we put down those sheet-iron and
28 cement pipes fifteen years ago. How many miles of those pipes we put down at the time I couldn't tell you, because we put them down from year to year.

Q. But you must have some idea how many miles you put down in all?

A. No; I couldn't state. I haven't any means of telling it. We put down iron pipes before that and put down iron pipes since that time.

Q. Some of these pipes you put down you had to take up and put iron pipes in their place?

A. When there has been a failure of those pipes we put down iron pipes in their places. We have not any of the old pump logs still lying, with water. There are old pump logs lying in the ground, and people have sometimes got water from them long after we ceased to pay attention to them. I don't know that any one does now. All the reservoirs we have built are now in use. We built one we never were able to make hold water. That was right north of the first reservoir that we began to use. It was on General Stolp's property, or, rather, property that we bought of General Stolp; I should think

about fifty rods north of the million and a half reservoir. That reservoir probably would have held a million and a half, if we could make it hold. The rock was porous. How much that reservoir cost I don't know. It was built before I was a director—built right after the organization. How much that cost I never had any information. I should think it may have cost $5,000, the work that was spent upon it, possibly more. It was quite a small reservoir. There are not any other reservoirs which we have built which we have
29 not used. All the other reservoirs which we have constructed are now in use. We have four reservoirs and are using them all. The large reservoir is in use for holding water. Water is being pumped into it, and water is running into it from Stolp hollow. We are drawing from it to supply the city.

By defendants' counsel:

Q. How much pressure is afforded by your system of water works upon the mains?

Objected to as wholly irrelevant and immaterial in this case; that the subject and control of the water works, its pressure and condition, is entirely under the direction of the common council of the city of Syracuse.

Objection overruled. Exception taken by plaintiff's counsel.

A. Well, just the pressure that 110 feet will give. I believe it is 35 pounds, but that is a question that scientists can know. The books will show exactly what the pressure is. My impression is that it is 35 pounds from that reservoir.

Q. How high stream of water can be thrown by a fire-engine toward the university?

A. At the university?

Q. Yes.

A. I don't think there is any water at the university.

Q. Well, at Beech street, where your mains terminate, how high a stream—how much could be thrown from a hydrant?

A. Well, when you get to the hight that the water would run, of course it would not throw it any, would it? How high a stream of water can be thrown from our mains at Beech street would
30 depend upon the hight of Beech street. I presume it could be 35 or 40 feet. You can throw it here in the city over the tops of any of these stores. I believe when you speak of Beech street you mean where it crosses Genesee street. I won't judge of the elevation. I say that we have supplied 4,000,000 gallons of water per day—sometimes more than that. I said that was, I think, about the average. How much the company got from the city in 1850 for the water supplied I couldn't tell you. I have no recollection. I knew at the time.

Q. Was it $2,000.00?

A. I told you I haven't any recollection. How much four-inch pipe we have I couldn't tell you. Our chart would indicate more four inch than any other kind. I should say our chart would indicate how much four-inch pipe we have got and that of other dimen-

sions, and how much twelve-inch pipe we have got I couldn't tell you. I should think not a very great deal. The greater portion of that pipe is not four-inch pipe. I didn't say it was. I said I thought there was more of that than any other. What proportion of our pipe is four-inch pipe I couldn't tell you. I don't carry those little details in my mind. The books will show just how much there is of each kind. Our capital stock at present is $440,000.00. That is our capital stock. Part of that is made up of stock dividend, part of it consists of stock dividend. How much I couldn't tell you. These stock dividends were made through a period of more than twenty years. How many were declared I couldn't tell you. I think a dozen of them. The dividends were, I think, generally, about six per cent.

31 Q. Then you think there were about a dozen six per cent. stock dividends?

A. I guess at it. I cannot tell in round numbers how much of our stock is represented by stock dividends; our books would indicate. They would show just when we made stock dividends and the amount of each of them.

Q. In estimating the total amount expended by you upon your works at $725,000.00 will you please state how you have arrived at that sum?

A. By charging to construction all the money that was expended for construction, and I think, as I learned, there has something been charged over to construction that ought not to be. The only item that I know of is where we have put down iron pipe in the place of cement pipe. They have charged that to construction, whereas there should not have been but a portion charged to construction.

Q. Well, wherever you have taken up the old pipe and put down new pipe?

A. We have never done that except in repairing this cement pipe. Whatever repairs we made have not been charged to construction. We have not ever computed interest on our construction account and let that go into that account, not to my knowledge. We have an account upon our books which indicates what has gone into construction.

Q. There is an account known as the construction account?

A. I never looked into the account, but I know that is the account that is kept. Every year they generally report just what the construction account is.

32 Q. Well, how do you make up the cost of $725,000.00? Give us the different items. How much did your last reservoir cost you?

A. The last reservoir, I suppose, has cost us at least $100,000.00. I think that sum. There has never been a report made to show just exactly, but I think it is quite $100,000.00. What has been the cost of our pipe I couldn't tell. We have been putting down pipe now for forty years, nearly.

Q. Can you specify any other details?

A. Oh, lands.

Q. How much did your lands cost?

A. Well, we gave $5,000 for one piece of land that we have, and my recollection is—I won't be sure—I think we gave ten or fifteen thousand dollars for what we bought on Onondaga hill.

Q. Any other amount you have expended for land?

A. Oh, yes. This last piece of land we bought—whatever there was of it; somewheres between thirty and forty acres—cost us, on the average, three hundred to three hundred and fifty dollars an acre.

Q. What has been the cost of your other reservoirs?

A. Well, there is what we call the Stolp reservoir, which is 166 feet above the city; cost ten or fifteen thousand dollars. The one at Onondaga hill, it seems to me, the dam cost us $30,000. The fourth is a little reservoir of one million and a half gallons. That we built before I was in the board. It cost, I think, six or eight thousand dollars. What the cost of our pumping station was I couldn't tell. I think we paid $15,000. For the two last engines that we bought, which we bought in addition to the main
33 engine, and the main engine, I think, cost us twenty-five or thirty thousand dollars.

Q. Well, have you specified all the different works now that are owned by the company other than the pipe?

A. There are the buildings connected with the engines. How much our buildings cost I couldn't tell.

Q. Well, outside of the buildings have you given all that belongs to your plant?

A. Buildings and lands; other engines that we have had and worn out. We have had engines before these, and they have been worn out. We have not spent money in repairing our reservoirs as I know of; we have spent money in concreting the bottom of it. I have not specified everything that went into that plant; there are a great many things that have gone into it. There was the property that we bought on Harbor brook; I don't know how much that cost; it was bought very soon after I came in. That is no longer utilized, but we bought it, and we bought various rights to water. The sources of supply were not sufficient to supply the city. How much the Harbor brook cost I don't remember. I mentioned all the sources of water supply acquired this forenoon, I think; those are all, I think. We have not discontinued using any except what we had at Lodi; that was discontinued a long while ago. Harbor brook is discontinued. We use all the other reservoirs we ever had. Our plant has been added to as the business of the company required it; just as the wants of the city we supplied them. When the last increase of stock was I couldn't tell; I think it was three or four years ago. I think that there was a dividend made of
34 twenty-five per cent. at that time—a stock dividend; it seems to me there was—or twenty.

Q. Twenty-five per cent. on how much?

A. Well, that I couldn't tell you, for I don't know what the capital was then. I do not know how much the twenty-five per cent. aggregated; I know the amount was a great deal less than the construction account. The money that we paid for the construction

was not paid from the earnings of the company; the great bulk of it was not. Some of it was paid in that way. All the money that was represented in these stock dividends was money paid for construction out of the earnings. The stock dividends was money or a portion of the money we had earned in previous years. How many consumers—private consumers—there are I couldn't tell you; they vary so greatly from year to year that I couldn't tell. What has been the average number during the last five years I couldn't tell. How much money has been paid in towards the capital during the last five years I couldn't tell; I don't think there has been any. There has been during the last ten years; how much I couldn't tell that; I didn't keep any account of those things. I have not an idea as to how much. I haven't any idea how much we paid in, but we paid in from time to time quite large sums of money; how much during the last ten years I couldn't tell; that can be shown by the books of the company.

Redirect examination:

Q. State what was the object of the stock dividends and how the earnings were put back into the increase of the plant. State it in your own way.

35 A. Well, a large part of the earnings for the first twenty or twenty-five years was put back into the property. There was some cash dividends made—simply dividends scattered along; none over six per cent. That is my recollection of it, and the greater bulk of our dividends were paid in stock. They were paid in stock because we hadn't any money.

Q. And how about the sale or the value of the stock at those times when the dividends were being made? What was the stock worth?

A. Up to 1880, I think, you could not get more than fifty cents for the stock any time. Well, I won't say any time; I don't know. The first two or three years I didn't know so much about it then, because I didn't know of any being sold, but all the time that I was president of the company, from 1860 or thereabouts down to 1880, the stock was not generally worth more than fifty cents on a dollar. There may some of it have been sold for sixty, but it was not salable. There was no market value for the stock. Nobody would take any stock of the company. The stockholders simply took the stock, as I have suggested, upon the increase of the plant and the furnishing of the money.

The COURT: Well, they took the stock. I don't understand that question. They only took the stock on the increase of the plant and furnishing the money?

Mr. FORBES: Why, they earned about so much. They had

36 no dividends and they took no dividends. They couldn't declare any cash dividends, so they declared in stock.

The COURT: They took the earnings of the company and used them up in their business and then issuead stock dividend in place of it.

Witness resumes:

That is it. Their stock was never watered. I think all our cash dividends has been six per cent., as far as I recollect, above that. The entire earnings of the property have been paid back into the stock to increase it. I think we have had regular dividends of six per cent., made since about 1880, on the basis of $440,000.00. I would not say that we have not had some before that; I know we have had that; had some earlier. Every time we made a dividend we made it — the stock—whatever existed. That covered the stock that had formerly been issued by construction account.

Q. Now, you may state to what extent you have issued bonds and to what extent bonds are out.

A. $200,000.00—that is, $200,000.00 that is outstanding now. There is a little of it at seven per cent., but the bulk of it is six.

Q. Now, counsel has asked you with reference to laying iron and cement pipes. You may state whether you are familiar and for how many years have made it a study and what experience you have had in the examination of the question of the best methods of furnishing water to the different cities in the United States.

Objected to as immaterial.

37 Q. Whether you have studied the methods and know something practically from observation about the best methods of furnishing water.

The COURT: Well, the question seems to be double; study is one thing and practical experience is another.

Q. Well, practical experience.

A. I have known some at Albany. I examined particularly the one from which they furnish water now to the city of Brooklyn and New York. I have examined it to some extent; not scientifically.

Q. Now, you may state what there is about putting down these sheet-iron and cement pipes fifteen years ago.

A. Well, they were used generally in the country then. We found that they were used at Hartford, Albany, Springfield, Worcester, and different places, more or less—at Watertown—and we were satisfied that they were a valuable pipe to lay down. Those pipes and their services were made in good faith by the company and with a view of reaching the best methods of supply. The great bulk of the pipe is in the ground now and has done very good service. The cast-iron pipe is liable occasionally to burst. All iron pipe isn't equally good. Of course, we put down no pipes we thought was defective. The burst comes in the defective pipe, and in iron pipe it is not at all unfrequent that there are defects in the pipe—places that are thinner than others that break. When that is done—when the bursting takes place—we then pay the damages. We have paid damages two or three times. Whenever there are any damages we pay them. It is not common that there
38 are any damages. In this last winter we paid at one time $1,500 for the bursting of a pipe, and we paid six or eight

hundred dollars before, but I think that is more than we ever paid before; either of them is more than we ever paid before.

Q. Have you furnished substantially all of the pipes to the main that have been called for by the city?

A. The city rarely asks us to furnish any pipes.

Q. Well, have you furnished the city whereever they have required it?

A. I don't know but we have whereever they have required us; not lately. Formerly we had a contract with the city whereby we laiddown all the pipe they wanted, and then they paid us something for laying it down, but of late years they have not paid us anything.

Q. You may state where you have laid pipe that has been used by the city.

A. Laid half a mile on Montgomery street in all, where there is not a consumer. There were hydrants there that the city uses also on Delaware street; more than half a mile. We have one consumer, I believe; also on the east end of Butternut street there is a long line of pipe there with only two consumers; the city does not pay anything for them.

Q. Don't they pay for the use of the hydrants?

A. They pay for their using hydrants.

Q. Don't they pay for the water that the company furnishes?

A. A great deal of this pipe has been laid within the last six years.

39 Q. You stated that the city paid nothing on account of those pipes. I suppose the water they take through those pipes they pay for.

A. They pay a certain sum of money every year.

Q. And they pay not a cent for the extensions of the pipe?

A. We have laid eight miles of pipe since we have been paid $26,000. We have got nothing more in consequence of laying that eight miles of pipe. The last arrangement the amount paid was $26,000.00, and we got no more for the eight miles that we laid than though we had not laid it at all.

Q. Now, General, what arrangement have you made to supply the James-street hill with water? Just state what has been done pursuant to making that supply.

A. When the street was paved or macadamized some years ago we laid a pipe to the top of the hill and put in the side pipes to the curbs. That has all been done up to Highland street. That is seventy-five or eighty rods from the top of the hill, and that is all pipe and main.

Q. Now, you may state, General, whether the only way that that can be furnished is by a direct pipe from the higher reservoir. You may state how that can be furnished by the water company.

A. It may be furnished in two ways. By an independent pipe from our highest reservoir—that would be one way; not letting the water be taken until you get to James-street hill, which would be two or three miles; or you could put an additional engine down in our engine-house and an independent pipe in the same way to the top of James-street hill and force it up there.

40 Q. And is the company ready and willing to make that service or join the city in making it?

A. We are willing to do it on any terms that the company can afford to do it. Give us the same terms that they have given the other company and we would be very happy to do it. The city has not ever paid any sum per mile for the distribution of this water for our pipes.

Recross-examination:

We don't pump our water up on James-street hill, because we have not got the necessary apparatus for doing it. There is not any other reason.

Q. Would your pipes stand the pressure?

A. It would not through those cement pipes and get up there.

Q. But the cement pipes would not stand the pressure necessary?

A. Well, I don't know about that—how much they would stand. I do not believe that the use of those pipes is the best way of constructing water works; I don't at all.

Q. Is it a better way now?

A. No, sir; we don't use them now. We have some still in the streets—those that were used fifteen years ago.

Q. Haven't you recently refused to lay down water mains in the city unless you had three subscribers?

A. We never had any rule of that kind.

Q. Didn't you do it, in fact?

A. We have refused. We have laid a good many miles of pipe that didn't pay anything.

Q. But you have refused on several occasions unless you had three subscribers?

41 A. We have no such rule. There has been one case so far as I know of, where they have applied, where they had three or four subscribers and we didn't do it. We were not bound under our contract with the city to furnish water for the purpose of extinguishing fire. We are not bound to furnish it in any particular spot.

Q. Your contract would permit you to furnish it at some particular place and they get it from there?

A. Oh, the city has a right to get it where it can, and we have laid pipe. I have admitted this morning that there are certain portions of the city that are without protection. We have miles of pipe that don't pay us two cents on a dollar. We haven't ever laid that pipe down from the higher reservoir down to James-street hill for the purpose of supplying that part of the city. We have not ever made application to the city to unite with us in paying for such pipe. We have not even suggested that to any people along James street.

Q. That is a recent idea of yours on the subject?

A. They know it as well as I do.

(Question repeated.)

A. Anybody would necessarily have the idea if they had the water 165 feet high they would know. We have got no such supply of

water at 165 feet that we could furnish for the pipe and onto the other hill.

Q. The water is uncertain in quantity, then?

A. That was the water from Onondaga hill, and there is not always an abundant supply. The only feasible way would be to get water up there—would be to have an independent pipe and force it up. We would get our water from the Onondaga creek.

42 Q. Then your water, so far as your hill reservoir is concerned, is insufficient to supply the elevated portions of the city?

A. If we didn't have anything else we could supply the elevated portion from the 165-feet reservoir, but we couldn't supply the people that we are now supplying it—that is, soft water. Our company has not recently taken steps to get water from other localities. Our company has not ever employed Howard Souls, an engineer, for that purpose; not to my knowledge.

Q. You haven't read the newspapers lately?

A. Well, I have been away two weeks.

Q. Have you complied with any requests that have been made by the common council with reference to laying down water mains?

A. There has not been any requests made to us.

Q. Well, any resolutions or suggestions?

A. I have not seen any resolutions.

Q. And you have not, therefore, complied with any?

A. We have been running about two miles of pipe every year for the last four or five years.

Q. So that wherever you have laid any pipes it has been voluntarily on your part?

A. Yes, sir.

Q. And not induced by any direction or request or requirement on the part of the city or common council?

A. No, sir.

Q. The same is true with reference to building the reservoir?

43 A. Oh, yes; we have never had any request or suggestion from the common council.

Redirect examination:

I do not mean that to apply to all the time. There was a time when we laid pipe whenever the common council requested us to under an agreement. They paid us for it; as long as they paid us we laid it; and since that time they made no requests, and we have not, therefore, fulfilled or carried out any requests. I think there may have been a resolution passed here and there requesting the water company to lay pipe. I don't know. I have not seen anything of that kind, but we have laid it right along. We have laid it where it was most wanted and where it would best protect the city.

Q. Now, in the cases where you refused to lay it, was that from the common council or from individuals?

A. Individuals. We didn't refuse to lay it; we neglected it.

There is an ample water supply to send water on the top of James street if the city will join with us in aiding us and getting the pipes.

Recross-examination:

The reason why we have not put down pipes where individuals have requested us to do so is because it would not pay us anything.

Q. So that the question of putting down pipes has been entirely dependent upon whether it would pay you or not?

A. Largely—not entirely. The Mulberry-street pipe was not entirely on that principle; a part of the Delaware pipe the same way.

44 Q. The principal idea has been whether it would pay you as a financial enterprise?

A. Of course water companies are institutions that are expected to pay dividends, and must be managed to make them pay or else they cannot be managed at all. Never but one twenty-five per cent. dividend has been declared by the company to my knowledge. What the next largest was I don't know. I have no recollection of any large dividend except that.

Redirect examination:

So far as an individual is concerned, as between us and the city, we are at perfect liberty to deal with them as we please. An individual had nothing to do so far as the city was concerned.

A. You may state the circumstances under which you didn't lay down the pipe requested by individuals.

A. There was one case that I have in mind down in the First ward. There was an application; three or four persons signed an application and we found that it wouldn't pay us two per cent. We didn't lay it down. We didn't refuse to, but there was a great many other places where it would pay better and where it was more necessary and where we could use our capital to better advantage; and in those places, in case of fire, there was plenty of water within reach; not from the canal; from water in Salina street. The pipe was a street from Salina street and run along on Turtle to Bear street. The book which is shown me was printed by the common council.

Plaintiff's counsel offered in evidence the contract of September 10, 1851.

45 Also the agreement of July 11, 1853.

Also another agreement of July 11, 1853, marked Exhibit 12, hereto annexed.

Q. (Showing witness map.) Is that the map you meant?

A. If it has made pipe generally lying upon it, it is probably the one. It is such a map as that I have sent for—map marked Exhibit 13.

The WITNESS: The pipe on James street is only carried up to that point. That is as far as it goes (indicating). It is to the top of the hill.

Recross-examination:

Q. This map and the red lines upon the map, in the center of the street, indicate the location of your pipe?

A. Yes, sir; this is the map. I don't know whether all the pipe is laid down upon it, but this is the map I refer to. It is kept in the office of the company.

Redirect examination:

This is the map of 1882. I don't know how closely Mr. Brown has kept the pipe laid down. I have not any knowledge as to whether that map contains all the pipe that has been laid down in the city or not. I see one place here where there is some pipe laid down that is not down on the map.

Recross-examination:

That is from Mulberry street across to Salina; not from Castle street; on Castle street.

46 Q. Look at the map and see whether in the main it does not correctly indicate the pipe that has been laid on various streets of the city.

A. As far as I see, it seems to have the pipe on it.

DEFENDANTS' COUNSEL: We offer in evidence as Exhibit 13.

Received without objection, and the same may be produced by either party at any stage of this appeal; a copy of which is hereto annexed.

The COURT: That is the map issued in 1882, as I understand?

Mr. FORBES: Yes, sir.

Redirect examination:

Q. You haven't looked at it carefully to see whether it does in fact?

A. I don't know whether it does in fact, but it does generally.

Q. Whether it does in fact contain or represent all the pipe?

A. I saw one place.

Recross-examination:

Q. When did you lay that pipe in Delaware street that you spoke of?

A. We laid it several years ago. I can hardly tell you when. That pipe furnished water to the idiot asylum. We have a contract with the State to furnish water to the idiot asylum.

Q. Was there any other means of supplying the asylum with water before you laid that main in Delaware street?

47 A. There was another pipe that passed down through there.

Q. Did you furnish them from any other main than that in Delaware street?

A. I am not sure; I am not sure which pipe was laid first,

whether the one on Delaware street or the one that comes down Geddes street.

Q. They were laid about the same time?

A. That I can't tell you; I can't call to mind now.

Q. But the Delaware-street main is there for the purpose of supplying the idiot asylum?

A. My impression is it is, but it may be the Geddes-street main that supplies the idiot asylum; they both come within the same distance of the idiot asylum; they cross one another. I do not know how much the company gets from the idiot asylum; it is varied at different times. I don't think they pay meter rates; I haven't an idea as to how much they pay.

Redirect examination:

There is no difficulty in supplying the top of James-street hill from a pump at our works there, in case the city would join us.

Q. But to attempt to supply it from a reservoir above it would entirely destroy the private plumbing, wouldn't it? Everything would have to be plumbed over again, or substantially that?

A. No; not necessarily. You could connect with the pipe at any place you pleased and put in a gate there to stop the other water. This soft water is used for the factories and for boilers; the large laundrying establishments of McCarthy. It is that portion
48 of the water which is taken on the surface above the lime rock, and is used for mechanical purposes; used by the railroads largely for their engines.

Recross-examination:

We have constructed a piece of pipe or some pipe from Mulberry street to Salina street, so I understood; that does not run partially into the village of Danforth; it would not reach Danforth; it would be all in the city. The line is a little south of that.

Q. You furnish private consumers with water at that point, don't you?

A. I don't know whether there are any customers there or not. There are houses along there.

Plaintiff next read in evidence from the minutes of the proceedings of the board of trustees of the village of Syracuse and of the common council of the city of Syracuse resolutions and preambles thereto, proceedings and communications entered, appearing on said minutes at the following dates:

November 8th, 1847; July 5th, 1848; January 16th, 1849; February 7th, 12th, and 13th, 1849; March 7th, 1849; March 19th, 1849; May 7th, 1849; January 7th, 1850; April 21st, 1851; April 28th, 1851; August 25th, 1851, and other resolutions and schedules contained in printed book, pages 46 to 77; May 9th, 1864; two of May 16th, 1864; June 17th, 1864; June 27th, 1864; July 11th, 1864; July 18th, 1864; October 17th, 1864; October 31st, 1864; December 26th, 1864; May 22d, 1865; June 26th, 1865; July 3d, 1865;
49 July 10th, 1865; July 17th, 1865; August 14th, 1865; Sep-

tember 11th, 1865; September 18th, 1865; March 19th, 1866; April 23d, 1866; May 28th, 1866; June 18th, 1866; July 2d, 1866; July 16th, 1866; July 30th, 1866; June 4th, 1867; June 17th, 1867; July 8th, 1867; July 29th, 1867; May 28th, 1877; September 10th, 1877; December 9th, 1867; December 23d, 1867; June 22d, 1868; July 13th, 1868; two of July 27th, 1868; August 3d, 1868; August 10th, 1868; February 8th, 1869; August 9th, 1869; January 24th, 1870; February 28th, 1870; two of March 7th, 1870; March 14th, 1870; March 21st, 1870; October 3d, 1870; April 23d, 1872; October 2d, 1876; February 28th, 1878, communications undated from water Co.

The foregoing resolutions, preambles thereto, and communications marked as one exhibit—Exhibit 13. Copies annexed.

PLAINTIFFS' COUNSEL: It is admitted since they stopped the contract system they went into the award system, and that has continued down to the present time.

DEFENDANT'S COUNSEL: Yes; I admit that.

PLAINTIFF'S COUNSEL: We have the last contract here, which expired in 1868, in March. I do not find any after that. We offer in evidence the contract made between the water company and
50 the city of Syracuse, dated March 13th, 1863, and apparently running for five years. This contract provides for the payment of an annual sum for water; and also for the payment of a percentage on the pipe laid.

Received and marked Exhibit 15; annexed.

Plaintiff rests.

Mr. MARSHALL: The term three years during which the last award was made expired on the 1st of July, 1884. I will put in evidence the last award.

Received, marked Exhibit 16; annexed.

Defendants also offered in evidence the articles of incorporation of the Central City Water Works Company. Received and marked Exhibit 17; annexed.

Defendants also offered in evidence acceptance by the Central City Water Works Company of the resolution and grant made by the common council of the 23d of March, 1885, which has been introduced in evidence by the plaintiff. Marked Exhibit 17½, a copy of which is hereto annexed.

Mr. MARSHALL: You have stated that the Central City Water Works Co. has, under this resolution, opened an office and commenced to make surveys to carry out the conditions of the resolution.

Mr. FORBES: I concede that.

51 THOMAS RYAN, sworn for defendants in each case, testified:

I am the mayor of Syracuse, and have been during the last three years; third term. I am acquainted with General Leavenworth and

the other officers of the Syracuse Water Company. During the past year there has been negotiations between the city authorities and the officers of the water works company with reference to a contract for three years, the price to be paid by the city for the use of the water to be furnished by the water works company being the subject of the conference.

Q. What has been the amount demanded by the water works company per year for the use of the water for municipal purposes, for the term of three years, commencing July, 1884, and continuing until July, 1887?

Objected to by plaintiff upon the grounds that it is incompetent and inadmissible; that if there is any resolution or action on the part of the common council it is in writing, and that it is the best evidence, and must be produced.

Mr. MARSHALL: These are negotiations and not writings.

Plaintiff's counsel further objected: And that there is no authority shown in Mayor Ryan to negotiate, and that he could not do it; it would neither bind the city or the company, unless the resolution was in writing and he was authorized, which is not produced; that it is wholly incompetent and immaterial what price they
52 asked—they had a right to ask what they pleased, and it was to be either settled by contract or by a commission.

Mr. MARSHALL: They were negotiating for a contract, and have been unable to make one. I want to show what their demands were, their exactions.

Objection overruled. Exception for plaintiff.

A. Mr. Leavenworth and Mr. Wilkinson and another gentleman, I forget who it was, appeared as committee of the water company.

Mr. FORBES: I desire to enter the objection that there is no evidence to show it was the action of the Syracuse Water Company, or any one authorized by them.

Objection overruled. Exception for plaintiff.

The WITNESS: They represented themselves as a committee of the Syracuse Water Company. I knew them to be officers of the water company, and had conversation with them before that; this was some time prior to the time of their contract being expired. They called at the common council meeting one evening. We had consultation with them before four or five of the aldermen; the city clerk was present. Mr. Leavenworth asked $40,000.00 a year for the next three years to make a contract, and stated several reasons why they ought to have it. We couldn't see any reasons why we
53 should raise and give them any more than $26,000.00. What they demanded was $40,000.00. The city has not made any contract with them. We tendered them $26,000.00, and they refused it; they said they would go to the courts and apply for a commission and fight it.

Cross-examined:

Q. You said they gave their reasons for it. What reasons did they give for not being willing to take $26,000.00 under the circumstances?

A. For the reason we were sprinkling the streets with the city water, the same as we had been doing for the last four years.

Q. You were using the water to sprinkle the streets without compensation?

A. That was in the last contract.

Q. I am asking you were you using it.

A. The courts decided that $26,000.00 should be all the city would allow.

Q. Just answer my question. Were you sprinkling the streets without any extra compensation or was it all in the $26,000.00?

A. $26,000.00. That was the only compensation we were paying.

Q. What other reason did he give?

A. The city was increasing in population, but they were not extending their mains. We asked them to extend it.

Q. Never mind that.

A. This is the question and these are the facts.

Q. You are not in the common council now. I want you to answer my question, if you please.

A. I will.

54 Q. What did you say on the subject of your using water unnecessarily at the schools and wasting it?

A. We denied the charge.

Q. What did he say on the subject?

A. He said the city was wasting water, and we denied it, and we showed him the proof of it.

Q. What did he say on the subject?

A. Nothing more than the city was wasting water in the school-houses.

Q. How many school-houses are furnished by the company?

A. The same number that has been furnished for the last several years; probably sixteen in the city. I won't be positive. We failed to agree upon a price with this committee; did not agree.

Q. And you never have made any application for any commissioners since that time?

A. It is not our duty to do it. We have not; no. No commissioners have been appointed and no agreement has been made since the expiration of the last award.

Q. And the matter stands open in that manner?

(No answer.)

But we are still using and taking a supply of water from the company. The city paid the $26,000.00 last year at the rate of $26,000.00. That was when our contract expired.

Q. You have not paid anything this year?

A. It is not due this year.

By the COURT:

Q. Then there hasn't come a time for paying since the expiration of the contract?

(No answer.)

Q. Haven't you paid since July, 1884?

55 A. Paid last fall some time.

Q. Up to January?

A. Up to a certain date.

Q. Nothing has been paid on the time since the expiration of the contract?

A. I couldn't say positive. The city clerk is here.

By plaintiff's counsel:

Q. You probably paid up to the close of the last award—up to the expiration of the last award? That is all that has been paid in full?

A. I couldn't say what time it has been paid up to, but I know we paid last summer. I know we paid something just before Wilkinson's bank failed, and your company had part of the money in the bank.

Evidence closed.

EXHIBITS.

Statutes Relating to the Syracuse Water Company.

Laws of 1821.

Chapter 176.

An act to supply the village of Syracuse with wholesome water.

Passed March 27, 1821.

SECTION 1. Be it enacted by the people of the State of New York, represented in senate and assembly, That the freeholders and inhabitants of the village of Syracuse, in the town of Salina, be, and are hereby, authorized to take a sufficient supply of fresh water for the use of said village from any springs on the lands of

56 the people of this State in said town lying eastward of said village, and to carry the same in an underground aqueduct across the lands of the said people to said village, and at all times to enter on the same, to dig ditches for laying said aqueduct, and to repair the same from time to time when necessary, with as little injury to the said lands as may be: Provided, That if such springs shall be of sufficient elevation to be carried into the Rome summit level of the Erie canal nothing in this act shall be construed to prevent the canal commissioners from taking the water of the same for supplying said canal in case they should deem it necessary.

§ 2. And be it further enacted, That the freeholders and inhabitants of said village authorized to vote at town meetings are hereby authorized to meet at the house of Sterling Cossett, inn-keeper, in

said village, on the first Monday of May next and elect by plurality of voices three trustees who shall be empowered to transact all business in relation to the rights hereby granted to the inhabitants of said village to bring in the water, regulate the manner of using it, fix the sums to be paid annually by those using the same, to sue in their own names as trustees of the Syracuse water works for all injuries done to the works erected under this act, and generally with all powers necessary to carry the purposes of this act into effect, and thereafter, on the first Monday of May in each year, to meet at such place in said village as shall be designated in a notice by such trustees or a majority of them at least six days previous put up at the last place of such election, and, in default of such notice,
57 then at such last place of election, and choose three trustees, for the purposes aforesaid, for the year ensuing, and the trustees for the past year shall thereupon account to the trustees-elect for all moneys received by them during the past year and pay over the balance in their hands to such trustees-elect and deliver over to them all papers and vouchers relating to said trust, and in default thereof they shall be liable to be prosecuted by such trustees-elect, in their own names as trustees of the Syracuse water works, for the amount of the moneys in their hands and for the papers so detained.

§ 3. And be it further enacted, That it shall be the duty of such trustees to select the springs from which they intend to take such water, and cause a map to be made of the same, with the route by which they intend to carry the same in an aqueduct to said village, to be made at their expense and filed in the office of the surveyor general of the State, with a declaration thereon signed by them that the same is made in pursuance of this act, prior to the sales of the land, under the act of the year eighteen hundred and twenty, for that purpose, and all sales of land by the State thereafter made embracing such springs or the route of such aqueduct shall be deemed to be subject to the rights granted in and by this act, and this shall be deemed a public act.

§ 4. And be it further enacted, That the Legislature shall have power at all times to modify, amend, or repeal this act.

58 *Laws of* 1825.

Chapter 124.

An act to incorporate the village of Syracuse.

Passed April 13, 1825.

SECTION 11. And be it further enacted, That all the rights, property, and powers of the trustees of the Syracuse water works be, and are hereby, vested in said corporation, subject to the obligations of the said trustees, and the several duties enjoined on said trustees in and by the act entitled "An act to supply the village of Syracuse with wholesome water," passed 27th March, 1821, shall hereafter be exercised by the trustees of said village.

Laws of 1829.

Chapter 236.

An act to amend the act entitled "An act to incorporate the village of Syracuse," passed April 13, 1825.

Passed April 23, 1829.

SECTION 2. The trustees of said village shall have power to convey to Oliver Teall, his heirs and assigns, all the rights, property, and powers of the trustees of the Syracuse Water Works Company, as vested in said village by the eleventh section of the act hereby amended, for the term of twenty years, and the said Teall shall thereafter be possessed of all the powers, rights, and privileges which are granted in and by the act entitled "An act to supply the village of Syra-
59 cuse with wholesome water," passed March 27, 1821; but in case the said Teall, after receiving such conveyance, shall neglect to exercise the powers thereby granted, the trustees of said village shall, after one year's notice, have the right to resume all the rights thereby granted on paying him the appraised value of any aqueducts laid, and the sum which the said Oliver Teall shall charge to a private family for the use of water shall not exceed five dollars; for a boarding-house, ten dollars; and for a tavern, twenty dollars a year.

Laws of 1834.

Chapter 151.

An act to amend the act entitled "An act to incorporate the village of Syracuse and the act amending the same."

Passed April 22, 1834.

SECTION 9. The trustees of said village shall have power to convey to Oliver Teall, his heirs or assigns, all the rights, property, and powers of the trustees of the Syracuse Water Works Company, as vested in said village by the eleventh section of the act hereby amended, for the term of thirty-five years from and after the passage of this act; and the said Teall, his heirs or assigns, shall thereafter be possessed of all the powers, rights, and privileges which are granted in and by the act entitled "An act to supply the village of Syracuse with wholesome water," passed March 27, 1821, and of all the powers of said village in reference to that subject by virtue of this act and the act hereby amended; and the said Teall, his heirs, executors, administrators, and assigns, may exercise in his
60 or their own name or names all the rights and privileges granted by said act, and he shall distribute the water to such places as the trustees may direct; but it shall not be necessary for him or them during said term of thirty-five years to elect said three trustees or to account for the money to be received by him or them from said works, as in and by said act is provided. In case said Teall, after receiving the conveyance of said rights, powers, and

privileges, shall neglect to exercise them, the trustees of said village shall, after two years' notice, have the right to resume all the rights, powers, and privileges thereby granted: Provided, That the sum which the said Teall, his heirs or assigns, shall charge for the use of said water shall not exceed five dollars for a private family, ten dollars for a boarding-house, and twenty dollars for a tavern a year: And provided further, That the trustees of said village shall have power, at the expiration of said thirty-five years, to reinvest themselves and take possession of said water works and all appurtenances thereunto belonging by paying at the time of so taking possession thereof, estimating said water works and appurtenances at the necessary cost of erecting such works, deducting the decrease in their value by reason of their waste and decay by time and use: And provided further, That in case said trustees and said Teall or his heirs, executors, administrators, or assigns cannot agree upon the value thereof, the same shall be ascertained and determined by three disinterested appraisers to be appointed by the supreme court of this State at the instance of either party.

61 *Laws of* 1842.

Chapter 108.

An act to amend the several acts in relation to the village of Syracuse.

Passed March 29, 1842.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The ninth section of the act entitled "An act to amend the act to incorporate the village of Syracuse," and the act amending the same, passed April 22, 1834, is hereby amended as follows: The said Oliver Teall, his heirs or assigns, may charge for the use of the water contemplated in the said ninth section, hereby amended, a sum not exceeding ten dollars per annum for a private family, twenty dollars per annum for a boarding-house, and forty dollars per annum for a tavern.

§ 2. This act shall take effect immediately.

Laws of 1847.

Chapter 475.

An act to incorporate the city of Syracuse.

Passed December 14, 1847.

Title III, Section 7:

"The common council * * * shall have power within said city to make, establish, publish, and modify, amend and repeal ordinances, rules, regulations, and by-laws for the following purposes: * * * 31. To exercise all other powers conferred on them by

this act in relation to highways, the prevention of fires, the
62 levying of taxes, the supplying the village with good and wholesome water, and other subjects of municipal regulation."

TITLE X.—*Miscellaneous Provisions.*

SECTION 12.

All former acts and parts of acts relative to the incorporation of the village- of Syracuse and Salina are hereby respectively repealed, but the repeal of such acts shall not affect any act done, privilege granted, right accrued or established, institution located, or any proceeding, suit, or prosecution had or commenced previous to the time when such repeal shall take effect; but every such act, privilege, right, location, and proceeding shall remain as valid and effectual as if said acts had remained in force, subject, nevertheless, to the provisions of this charter.

* * * The same rights, duties, obligations, and requirements as are now held by the trustees of the village of Syracuse or imposed upon them in relation to Oliver Teall, as to supplying the said village with pure and wholesome water, shall be conferred and imposed upon the said common council.

SECTION 18. This act is hereby declared to be a public act, and shall take effect immediately.

Laws of 1849.

Chapter 224.

An act to incorporate the Syracuse City Water Works Company.

Passed April 5, 1849.

The people of the State of New York, represented in senate and assembly, do enact as follows:

63 SECTION 1. Oliver Teall, Ira Seymour, John Wilkinson, Hamilton White, and Robert Furman and all such persons as may be hereafter associated with them are constituted a body corporate by the name of the Syracuse City Water Works Company.

§ 2. The capital stock of said company shall be sixty thousand dollars, to be divided into shares of fifty dollars each, which stock shall be considered personal property and shall be assignable and transferable on the books of the company.

§ 3. A majority of the persons named in the first section of this act shall meet, at such place as they may select, on the first Monday of May next (or such other day as they may select), upon giving four weeks' notice of time and place in some newspaper printed in said city, and apportion and distribute the several shares of said sixty thousand dollars of stock to the several persons who may then be the owners of the water works company now furnishing the city of Syracuse with water, according to their then existing interests, and shall then also ascertain the cost of the property then belonging to said water works company and the respective interests

of the several persons then comprising said company, and upon their conveying all their rights and interests and property in said company to this corporation, at the value so determined, the same shall be considered and taken as so much paid in on the several shares or on such shares as they may deem proper, which, according to this section, shall be distributed to the several proprietors of said water works company.

§ 4. The concerns of said corporation shall be managed
64 by five directors, who shall be stockholders, three of whom shall constitute a quorum for the transaction of business, and who shall hold their offices for one year and until others are chosen in their places. The directors shall be chosen annually on the first Monday of May, at such time of day and place in said city as the directors for the time being shall appoint. The first election shall be held on the first Monday of May, eighteen hundred and fifty. Three weeks' notice of such election shall be given by a publication at least once in each week in two newspapers published in said city. Each stockholder shall be entitled to one vote upon each share of stock held by him or her for at least ten days previous to an election. Voting shall be by ballot, and may be in person or by proxy.

§ 5. The directors shall annually appoint a president, secretary, and treasurer and such other officers as they shall deem necessary, who shall hold their offices until others are appointed in their places, and they may make and ordain such by-laws and regulations as they may deem necessary and proper for the management of their business and for accomplishing the purposes of the corporation.

§ 6. The directors may require payment of subscriptions to the stock at such times and in such proportions as they may see fit, under the penalty of forfeiting all stock and previous payments thereon, and may sue for and recover all such subscriptions. Notice of the time and place of such payment shall be published for four weeks previous to said time, at least once in each week, in two newspapers published in said county.

§ 7. The persons named in the first section shall be said
65 first directors, and shall hold their offices until the said first Monday of May, one thousand eight hundred and fifty, and until others are chosen in their places; and in case of vacancy in the directors by reason of the death or resignation of any director or of his ceasing to be a stockholder it may be filled by the remaining directors until the next annual election or until some other person shall be elected to fill the same. The directors herein named may appoint three persons, who shall be stockholders, to be inspectors at the first election, after which the stockholders shall choose three such inspectors at the annual elections. If no inspectors are chosen, the directors may appoint them from time to time. The directors may remove all officers appointed by them and appoint others in their places and fill all vacancies in the offices. If at any time an election of directors does not take place on the day appointed by this act, the corporation shall not for that cause be dissolved, but an election may be held on any other day in such manner as shall be prescribed by the directors or provided for by the

by-laws, four weeks' previous notice having been given in some newspaper printed in said city.

§ 8. For the purpose of supplying the said city of Syracuse with pure and wholesome water said company may purchase, take, and hold any real estate necessary for the purpose, and by their directors, agents, servants, or other persons employed may enter upon the lands of any person or persons which may be necessary for said purpose, and may take the water from any springs, ponds, fountains, or streams which may be approved of by the common council of said city, and divert and convey the same to said city,
66 and may lay and construct any pipes, conduits, aqueducts, wells, reservoirs, or other works or machinery necessary or proper for said purpose upon any lands so entered upon, purchased, taken, or held: Provided, however, the said company shall not (without the consent of the owner or person entitled to the use thereof) be authorized to take and divert any such water from any spring, pond, fountain, or stream within the city of Syracuse. Said corporation may, as aforesaid, subject to the regulations hereafter mentioned, enter upon any lands, streets, highways, roads, lanes, or public squares through which they may deem it proper to carry the water from said springs, fountains, ponds, streams, wells, and reservoirs, and lay and construct any pipes, conduits, aqueducts, or other works for that purpose, leaving the said lands, streets, highways, roads, lanes, and public squares in the same condition, as nearly as may be, as they were before said entry; but the said company shall not within the bounds of the said city of Syracuse lay and construct said pipes, conduits, aqueducts, and other works through any private garden, court-yard, or building lot without the written consent of the owner thereof.

§ 9. Before entering, taking, or using any land or water for the purposes of this act the directors of this company shall cause a survey and map to be made of the lands intended to be taken or entered upon for any of said purposes, and by which the land of each owner and occupant intended to be taken or used shall be designated, and which map shall be signed by the surveyor or engineer making the same and by the president of said company, and be filed in the office of the clerk of the county of Onondaga. The company,
67 by any of its officers, agents, or servants, may enter upon any lands for the purpose of making any examination and of making said survey and map, doing no unnecessary damage.

§ 10. In case the said company cannot agree with the said owners and occupants of any lands or water intended to be taken or used as aforesaid for the purchase or use thereof the directors, when giving such notice as is hereinafter required to be given by the commissioners, may apply to the supreme court at any term or session thereof held in the fifth judicial district for the appointment of five commissioners, by whom the compensation to be paid for the damages suffered or to be suffered by any person or persons by reason of taking said lands and water and constructing any of the work of said company shall be ascertained and determined, and in case of the death, resignation, refusal, or disability to act of any of the said commis-

sioners the said court may appoint others in their places. The commissioners shall cause a notice of at least twenty days of the time and place of their meeting to be served upon such owners of said land and water as can be found in this State, which may be served personally or, in their absence from their dwellings or places of business, by leaving the same thereat with some person of suitable age; and in case of any legal disability of such owner to act, then upon serving notice in like manner upon his guardian or person appointed to act for him as hereinafter directed; and in case any of said owners cannot be found in this State, such notice shall be given to them by publishing the same for six weeks successively in two
68 newspapers published in said city; and if any of said owners be married women, insane, infants, or idiots, the said court shall appoint some suitable person to attend in their behalf before said commissioners and take care of their interests in the premises. The commissioners may issue subpœnas to compel the attendance of witnesses to testify before them, and they or any one of them may administer the usual oath to such witnesses. They shall make a written report of all their proceedings, containing the testimony taken by them and showing the sum awarded to each owner or other person, and return the same to said court to be filed of record. The company shall pay to each commissioner the sum of three dollars per day for every day necessarily spent by him in the performance of his duties under this act, and to each witness sworn and testifying, or, if not sworn and testifying, who the commissioners shall certify were properly and necessarily subpœnaed, the sum of fifty cents per day and four cents per mile travel, going and returning, if living more than three miles from the place of meeting.

§ 11. The said company, or any party to the proceedings of the commissioners, may appeal from any award or determination of the commissioners, provided the party appealing shall, within ten days after any such award or determination shall be made, give written notice of the appeal to the other party or parties interested in the same, and the said court shall examine the report of the commissioners, and if their proceedings in the case have been irregular the court may set the same aside and order new proceedings and appraisement, and the said court may make such orders in ref-
69 erence to the proceedings of the commissioners and of notices to be given to parties as may not be inconsistent with this act and as the nature of the case and the interest of the parties may require; and the said commissioners shall again examine the case, and their decision then made shall be final. If at any time after an attempted or actual ascertainment of compensation under this act or any purchase of any lands or water for the use of said company the title acquired to all or any part of said land or water shall fail or be deemed defective the said company may proceed anew to perfect such title by procuring ascertainment of the compensation proper to be made to any person or persons whose title, claim, or interest in or lien upon such lands shall not have been compensated and extinguished according to law and by making payment thereof in the manner heretofore provided as near as may be.

§ 12. Upon the payment or legal tender of the compensation determined as before provided the said company shall be entitled to enter upon, for the purpose contemplated by this act, all the lands, waters, and real estate for which such compensation shall be paid or tendered as aforesaid, and to hold and use the same for the said purposes to them and their successors forever. The said company shall furnish, without charge, to the parties interested a sufficient supply for domestic purposes. If any person to whom any compensation shall be awarded or who shall be entitled to the same by virtue of said award cannot be found or shall refuse to receive the sum awarded to him, then the said payment may be made by depositing the amount of said award to the credit of said person in such
70 bank as may be appointed by said court. A certificate of such deposit signed by the cashier of the bank shall be published by said company in two newspapers published in said city for four weeks successively immediately after said deposit. If the person to whom compensation is awarded or who is entitled to receive the same as aforesaid be under legal disability as aforesaid, payment may be made to his guardian or person appointed as aforesaid by the said court; and if said guardian or person appointed cannot be found, then by deposit in bank as aforesaid, which deposit or payment as aforesaid shall be upon such security and reinvestment as the said court may direct.

§ 13. The said company shall also take and hold for the purposes contemplated by this act all the lands, waters, and real estate which they shall in any way legally enter upon and take by virtue hereof, to them and their successors forever. The said company may make any agreements, contracts, grants, and leases for the sale, use, and distribution of water that may be agreed upon between said company and any person or persons, associations and corporations, not inconsistent with the provisions of this act, which agreements, contracts, grants, and leases shall be valid and effectual in law.

§ 14. In laying pipes, conduits, or aqueducts, or constructing or erecting works in the streets, lanes, or public squares of the city of Syracuse, the company shall conform to such regulations as the common council thereof shall prescribe.

§ 15. The directors of said company may establish rules and regulations for and concerning the use of the water from their
71 works, so as to preserve the same from waste and may thereby impose penalties and forfeitures for any violation of said rules and regulations, so that said penalty or forfeiture shall not in any case exceed five dollars (not inconsistent with the constitution and laws of this State, and a printed copy thereof shall, in the month of May in each year, be furnished to each tenement in said city using said water), which penalties may be recovered from the person or persons violating the said rules, with the costs, in the name of the company, before any justice of the peace of said city. Said rules and regulations shall be published for three weeks successively in two newspapers published in said city, and a copy of said rules and regulations, certified by the president or secretary of said company, with affidavits of said publication of the same made by any one of

the publishers of said papers or by a foreman in their offices, shall be received as evidence in all courts and places.

§ 16. Said company shall, when requested, furnish water to the common council of the city of Syracuse, for extinguishing fires and other purposes, upon such terms as may be agreed upon between the said common council and the company; and in case they cannot agree either said common council or said company may apply to the supreme court, as provided in section ten of this act, for the appointment of three commissioners, who shall prescribe the terms upon which the water shall be furnished; but in no case shall the amount to be paid by the city exceed the sum of ten dollars for any or each reservoir or hydrant furnished as aforesaid, and said company shall furnish water upon the terms so prescribed for the period of three years, at the expiration of which time a new
72 commission may be applied for by either the common council or the company, and thereafter once in three years a like application may be made.

§ 17. Any person who shall maliciously or wilfully destroy or injure any of the works or property of said company, or who shall maliciously or wilfully commit any act which shall injuriously affect or tend thus to affect the water of said company, shall be guilty of a misdemeanor.

§ 18. The corporation hereby created shall possess the powers and be subject to the provisions of title three, chapter eighteen, of the first part of the Revised Statutes.

§ 19. Nothing in this act shall be deemed or taken to affect or impair or interfere with the rights, privileges, and obligations of the city of Syracuse derived or imposed by or under the act of the Legislature entitled "An act to supply the village of Syracuse with wholesome water," passed March 27, 1821, or any act subsequently passed amending or altering said last-mentioned act.

§ 20. All the stockholders of the company hereby created shall be severally and individually liable to the creditors of said company to an amount equal to the amount of stock held by them respectively for all debts and contracts made by said company until the whole amount of the capital stock shall be paid in and a certificate thereof shall be made and recorded, as prescribed in the following section.

§ 21. The president and a majority of the directors, within thirty days after the payment of the last instalment of the capital stock, shall make a certificate of the amount of the capital fixed
73 and paid in, which certificate shall be signed and sworn to by the president and a majority of the directors, and shall within thirty days be recorded in the clerk's office of Onondaga county.

§ 22. The stockholders of said company shall be jointly and severally liable for all debts that may be due and owing to all their laborers and servants for services performed for said company.

§ 23. The indebtedness of said company shall not at any time exceed an amount equal to fifty per cent. of its capital stock, and if the indebtedness of said company shall at any time exceed such amount the directors of said company assenting thereto shall be

personally and individually liable for such excess to the creditors of said company.

§ 24. No person holding stock in said company as executor, administrator, guardian, or trustee and no person holding such stock as collateral security shall be personally subject to any liability as a stockholder of said company, but the person pledging said stock shall be considered as holding the same and shall be liable as a stockholder accordingly, and the estates and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such fund would have been if he had been living and competent to act and held the stock in his own name. Every such executor, administrator, guardian, or trustee shall represent the shares of stock owned by him as administrator, guardian, or trustee at all meetings of the company, and may
74 vote as a stockholder, and every person pledging his stock as aforesaid may in like manner represent the same and vote accordingly.

§ 25. No stockholder shall be personally liable for the payment of any debt contracted by said company which is not to be paid within one year from the time the debt is contracted nor unless a suit for the collection of said debt shall be brought against said company within one year after the debt shall have become due, and no suit shall be brought against any stockholder who shall cease to be a stockholder in said company for any debt so contracted unless the same shall be commenced within two years from the time he shall have ceased to be a stockholder in such company, nor shall any suit be brought against any stockholder until an execution against the company shall be returned unsatisfied in whole or in part.

§ 26. In case said company shall not go on and furnish a sufficient supply of good and wholesome water for the use of the said city and the people thereof within two years from the passage of this act and continue to furnish a sufficient supply the common council of said city may give six months' written notice to said company to furnish the same or that application will be made to the supreme court for the appointment of five commissioners, as provided in the tenth section of this act; and in case said company shall continue to neglect to furnish said supply until the expiration of said notice, then the property of said company shall be appraised in the manner provided in said tenth section, and upon the payment by said common council to said company of the sum so determined, then the said common council shall become the owners of said prop-
75 erty so appraised and paid for and be possessed of all the powers given by this act to the said company.

§ 27. The average amount that said company shall be authorized to charge per annum for the — of said water shall not exceed the sum of ten dollars for a private family, twenty dollars for a boarding-house, and forty dollars for a tavern, where said water shall not be carried higher than twenty feet above the Syracuse level of the Erie canal.

§ 28. Said company shall annually, on the first Monday of Jan-

uary in each year, report to the common council of the city of Syracuse, in writing, a full statement of the affairs of said company and the condition of said water works and of the income and expenditures of said company and in such detailed form as may be prescribed by the said common council, which reports shall be verified by the oaths of the president and secretary of said company.

§ 29. The common council of the city of Syracuse shall have the right at any time after the expiration of twenty years to resume all the property, rights, powers, and privileges of the said Syracuse City Water Works Company on paying to said company the amount of capital stock actually paid in and expended in said works, with fifteen per cent. annually thereon, deducting therefrom the actual profits annually received by said company, and on such resumption and payment by said common council all the said property, rights and privileges, and powers of said company shall vest absolutely in the common council of the city of Syracuse, and the said company shall, by an instrument in writing duly executed by the presi-
76 dent and secretary of said company, convey to said common council all the said property of said company in said water works.

§ 30. This act shall take effect immediately.

Laws of 1851.

Chapter 104.

An act to amend the act entitled "An act to incorporate the Syracuse City Water Works Company," passed April 5, 1849.

Passed April 8, 1851.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Section sixteen of the act entitled "An act to incorporate the Syracuse City Water Works Company" is hereby amended so as to read as follows: Said company shall, when requested, furnish water to the common council of the city of Syracuse for extinguishing fires and other purposes upon such terms as may be agreed upon between the said common council and the company; and in case they cannot agree either said common council or said company may apply to the supreme court, as provided in section ten of this act, for the appointment of three commissioners, who shall prescribe the terms upon which water shall be furnished; and said company shall furnish water upon the terms so prescribed for the period of three years, at the expiration of which time a new commission may be applied for by either the common council or the company, and thereafter once in three years a like application may be made.

§ 2. This act shall take effect immediately.

77 *Laws of* 1853.

Chapter 35.

An act to amend the act entitled "An act to incorporate the Syracuse City Water Works Company," passed April 5, 1849.

Passed March 22, 1853.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. It shall be lawful for the Syracuse City Water Works Company to increase their capital stock from sixty thousand dollars to such amount as shall, in the judgment of the board of directors, be advisable, not exceeding one hundred and fifty thousand dollars, and such increase may be made from time to time as shall be deemed expedient.

§ 2. Such increased stock shall be divided into shares of fifty dollars each, and shall be allotted to those persons who shall be shareholders at the time of such increase in the ratio as nearly as may be of the shares held by them respectively; and if any such shareholders shall decline to subscribe for such new shares such shares may be taken by the other shareholders or may be sold under the direction of the board. The instalments on such new shares may be called for in the manner provided for by the original act, and may be collected or the stock may be forfeited, as therein prescribed.

§ 3. The powers conferred by the eighth, ninth, tenth, eleventh, twelfth, and thirteenth sections of the original charter shall apply to any future extension or enlargement of the works of the said company, and they shall be subject, in reference thereto, to
78 the restrictions contained in the original charter, except so far as the same have been modified by an act of the Legislature amending said charter, passed April eighth, one thousand eight hundred and fifty-one.

§ 4. This act shall take effect immediately.

Laws of 1855.

Chapter 16.

An act to amend an act — "An act to incorporate the Syracuse City Water Works Company," passed April 5th, 1849.

Passed February 6th, 1855.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The fifteenth section of said act is hereby amended so as to read as follows: The directors of said company may establish rules and regulations for the use of the water from their works so as to preserve the same from waste, and may thereby impose such penalties for the violation of such rules and regulations, not inconsistent with the constitution and laws of this State, as they shall

deem proper, not exceeding fifty dollars in any case, which penalty or penalties may be recovered before any justice of the peace of said city, with costs, in the name of said company. Such rules and regulations shall be published in two of the papers in which the proceedings of the common council of the city of Syracuse are published at least once in each week during the month of May in each year, and a copy of such rules and regulations, certified and sworn
79 to by the president or secretary of the company, with the due publication thereof verified by affidavit of the publisher or foreman in the respective offices of said papers or by the affidavit of the president or secretary of said company, shall be received as evidence in all courts and places.

§ 2. In the case of the appraisal of lands or water for the company, as provided by the tenth section of the said act, the said company shall apply for the appointment of three commissioners instead of five, as designated in said tenth section, and said three commissioners shall possess all the power granted by said tenth section in reference to appraisal, and any two of said commissioners shall be authorized to act in the premises in case of the absence or disability of the third commissioner.

§ 3. The said company shall be at liberty at any time when it shall be deemed advisable to execute a mortgage upon their property as a collateral security for the payment of the bonds which have already been or may hereafter be given for any indebtedness of said company, not exceeding in amount fifty per cent. of its capital.

§ 4. This act shall take effect immediately.

Laws of 1857.

Chapter 63.

An act to revise the charter of the city of Syracuse.

TITLE IV.—*Powers of the Common Council.*

SEC. 4. The common council shall have power to make,
80 establish, publish, modify, ordain, amend, or repeal ordinances, rules, regulations, and by-laws for the following purposes:

(2.) To light the streets and public buildings of the city and to supply the city with water.

TITLE V.—*City Officers—Their Duties.*

SEC. 2. City clerk.—There shall be appointed one clerk, who shall hold his office three years. * * * He shall, at the first meeting of the council in April, render a full and detailed account of the amount of the funded debt; * * * also the sums due and to become due on contracts with the Syracuse Water Works Company or on other contracts.

§ 12. Superintendent of streets and city property.—The superintendent of streets shall hold his office during the pleasure of the

common council. He shall, under the mayor and common council, superintend all repairs and improvements upon the streets, avenues, and public places of the city, * * * the laying of gas and water pipes, the setting of hydrants in the streets, except as otherwise provided.

TITLE VI.—*Assessment and Collection of City Taxes.*

§ 1. The common council of the city of Syracuse shall have authority and are hereby empowered to raise by tax upon the property of said city in each year as follows: * * * For water dues, twenty-two thousand five hundred dollars, or such sum as may be awarded by commissioners duly appointed for the purpose.

81 *Laws of* 1864.

Chapter 104.

An act to amend an act entitled "An act in relation to the Syracuse City Water Works Company," passed April fifth, eighteen hundred and forty-nine.

Passed March 31, 1864.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The fourth section of the act to incorporate the Syracuse City Water Works Company, passed April fifth, eighteen hundred and forty-nine, is hereby amended so that the same shall read as follows, viz: The business of said corporation shall be managed by nine directors, who shall be stockholders, five of whom shall constitute a quorum for the transaction of business, and who shall hold their offices for one year and until others are elected in their places. The directors shall be chosen annually on the first Monday of May at such time of day and place in said city as the directors for the time being shall appoint. The first election shall be held on the first Monday of May, eighteen hundred and fifty. Three weeks' notice of such election shall be given by a publication at least once in each week in two newspapers published in said city. Each stockholder shall be entitled to one vote upon each share of stock held by him or her for at least ten days previous to an election. Voting shall be by ballot, and may be in person or by proxy.

§ 2. It shall be lawful for said company to increase their capital stock from one hundred and fifty thousand dollars to such
82 amount as shall in the judgment of the board of directors be advisable, not exceeding three hundred thousand dollars, and such increase may be made from time to time as shall by said board of directors be deemed expedient.

§ 3. Such increased stock shall be divided into shares of fifty dollars each and shall be allotted to the stockholders in proportion to the amounts held by them respectively. The instalments on such new shares may be called for in the manner provided for by the

original act, and may be collected or the stock may be forfeited, as therein provided.

§ 4. This act shall take effect immediately.

Laws of 1865.

Chapter 71.

An act to amend an act entitled "An act to incorporate the Syracuse City Water Works Company," passed April fifth, eighteen hundred and forty-nine.

Passed March 3, 1865, three-fifths being present.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The twenty-seventh section of chapter two hundred and twenty-four of the laws of eighteen hundred and forty-nine, entitled "An act to incorporate the Syracuse City Water Works Company," passed April fifth, eighteen hundred and forty-nine, is hereby repealed.

§ 2. Any person who shall maliciously or wilfully interfere with, trespass upon, injure, or destroy any of the works of said company or who shall maliciously or wilfully commit any act which shall injuriously affect or tend thus to affect the water of said company shall be guilty of a misdemeanor.

§ 3. The directors of said company may establish rules and regulations for and concerning the conduct of all such persons as shall take or use the water from their works, so far as respects the preservation, use, or waste thereof; may thereby impose such penalties and forfeitures for the violation of such rules and regulations not inconsistent with the constitution and laws of this State as they shall deem proper, not exceeding fifty dollars in any case, which penalty or penalties may be recovered before any justice of the peace of said city, with costs, in the name of said company. Such rules and regulations shall be published for three weeks successively in two newspapers published in said city, and a copy of the same, certified by the president or secretary of said company, with affidavits of the publication of the same, made by any one of the publishers of said papers or by a foreman in their offices, shall be received as evidence in all courts and places.

§ 4. The fifteenth section of said act and the first section of the act, chapter sixteen, of the laws of eighteen hundred and fifty-five, passed February sixth, in that year, are hereby repealed.

§ 5. This act shall take effect immediately.

84 *Laws of* 1877.

Chapter 36.

An act to amend chapter one hundred and four of the laws of eighteen hundred and sixty-four, entitled An act to amend an act entitled "An act in relation to the Syracuse City Water Works Company, passed April fifth, eighteen hundred and forty-nine."

Passed March 6, 1877.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The second section of an act, chapter one hundred and four, laws of eighteen hundred and sixty-four, entitled "An act to amend an act entitled 'An act in relation to the Syracuse City Water Works Company,' passed April fifth, eighteen hundred and forty-nine," is amended so as to read as follows, namely:

§ 2. It shall be lawful for said company to increase their capital stock from three hundred thousand dollars to such an amount as shall in the judgment of the board of directors be advisable, not exceeding one million of dollars, and such increase may be made from time to time as shall by said board of directors be deemed expedient.

§ 3. This act shall take effect immediately.

85 *Laws of* 1879.

Chapter 370.

An act to amend chapter two hundred and twenty-four of the laws of eighteen hundred and forty-nine, entitled "An act to incorporate the Syracuse City Water Works Company" and to amend the title of said act.

Passed May 26, 1879.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Section twelve of chapter two hundred and twenty-four of the laws of eighteen hundred and forty-nine, entitled "An act to incorporate the Syracuse City Water Works Company," is hereby amended so as to read as follows:

§ 12. Upon the payment or legal tender of the compensation determined as before provided the said company shall be entitled to enter upon, for the purposes contemplated by this act, all the lands, waters, and real estate for which such compensation shall be paid or tendered as aforesaid, and to hold and use the same for the said purposes to them and their successors forever. If any person to whom any compensation shall be awarded or who shall be entitled to the same by virtue of said award cannot be found or shall refuse to receive the sum awarded to him, then the said payment may be made by depositing the amount of said award to the credit of said person

in such bank as may be appointed by said court. A certificate of such deposit, signed by the cashier of the bank, shall be pub-
86 lished by said company in two newspapers published in said city for four weeks successively immediately after said deposit. If the person to whom compensation is awarded or who is entitled to receive the same as aforesaid be under legal disability as aforesaid payment may be made to his guardian or person appointed as aforesaid by the said court, and if said guardian or person appointed cannot be found, then by deposit in bank as aforesaid, which deposit or payment as aforesaid shall be upon such security and reinvestment as the said court may direct.

§ 2. The title of said act is hereby amended so as to read as follows: "An act to incorporate the Syracuse Water Company," and the name of said company is hereby changed to the Syracuse Water Company.

§ 3. This act shall take effect immediately.

Laws of 1885.

Chapter 26.

An act to revise, amend, and consolidate the several acts in relation to the city of Syracuse and to revise and amend the charter of said city.

Passed February 21, 1885.

SECTION 22. In addition to the powers conferred by this act the common council of said city shall have power to make, establish, publish, modify, ordain, amend, or repeal ordinances, rules, regulations, and by-laws for the following purposes:

2. To light the streets and public buildings of the city and to supply the city with water.

87 7. To regulate the opening of street surfaces, the laying of gas and water mains, the building, repairing, and cleaning of sewers, and the erection of gas or other lamp posts or devices for lighting the streets.

TITLE 5.—*City Officers, Their Duties.*

SECTION 41. He (the mayor) shall, at the first meeting of the council in April of each year, render a full and detailed statement of the amount of the funded debt, the amount falling due in installments during the year, the amount of interest due and — become due in said year; the amount, if any, of the floating debt of the city, the resources of the city other than from taxes, and the sums due and to become due on all contracts entered into by the city.

§ 48. Superintendent of streets and city property.—The mayor shall appoint the superintendent of streets and city property, and the term of office shall be one year. He shall, under the mayor and common council, superintend all repairs and improvements upon the cleaning of streets, avenues, and public places of the city, the building and repairing of sewers, cross-walks, gutters, and bridges;

the digging of wells, reservoirs, and cisterns; the laying of gas and water pipes, and the setting of hydrants in the streets, except as otherwise provided.

TITLE 7.—*Assessment and Collection of City Taxes.*

SECTION 99. The common council of the city of Syracuse shall have authority and are hereby empowered to raise by tax upon the property of said city in each year as follows:

§ 104. For water dues the sum of twenty-six thousand dollars, or such sum as may be awarded by commissioners duly appointed for that purpose.

88 PLAINTIFF'S EXHIBIT 1.

CITY OF SYRACUSE, IN COMMON COUNCIL.

Subject: Annexed resolution.

	Ayes.	Noes.
Ald. Leahey	1	
" Listman	1	
" Downey	1	
" Goettel	1	
" Glazier	1	
" Candee	1	
" McManus	1	
" Wilkin	1	
	8	

(A copy.)

Whereas the Central City Water Works Company has been organized as a corporation, under and by virtue of the laws of the State of New York regulating the formation of such companies, for the purpose of accumulating, storing, conducting, selling, furnishing and supplying water for domestic, manufacturing, municipal, and agricultural purposes to the city of Syracuse and its inhabitants and to adjacent villages, and for the purpose of constructing its works and enabling it to supply said city and its inhabitants with pure and wholesome water it is necessary that said company shall secure the right of laying its mains, pipes, and conduits in the streets of said city, and to construct aqueducts and other structures, and to make excavations in the streets of said city; and

89 Whereas it is also deemed for the best interests of said city of Syracuse that the system of water works proposed to be introduced by said company shall be adopted, and that a more abundant supply of water of a pure and wholesome character shall be furnished to the city of Syracuse and its inhabitants from other sources than those from which the present water supply of Syracuse is derived, and that those portions of the city of Syracuse to which water has not heretofore been conducted and which are without adequate protection against fire shall enjoy the advantages of an

adequate water supply, and that the water to be furnished for fire purposes in the city of Syracuse shall have a pressure which will meet with the increasing requirements of our community: Now, in consideration of the premises and of the various conditions and agreements herein contained, which are accepted and made by said Central City Water Works Company as an inducement to the grant hereinafter specified, it is hereby—

Resolved and ordained as follows:

SECTION 1. That the Central City Water Works Company, its successors and assignees, be, and it hereby is, subject to the conditions, covenants, and agreements hereinafter contained, authorized and empowered to build, construct, maintain, own, and operate water works in the city of Syracuse, N. Y., and all the necessary appurtenances for such water works for the purpose of supplying said city with pure and wholesome water, suitable and sufficient for all domestic, manufacturing, and fire purposes; to lay down pipes and water mains for the purpose of conveying water through the
90 streets, avenues, and alleys of said city; to acquire and hold, as by law authorized, such real estate, easements, and water rights necessary for that purpose; to use within the present and future limits of said city any and all streets, alleys, avenues, bridges, or public grounds which are now or may hereafter be laid out while laying or repairing such water works, but not otherwise; to receive, store, purify, conduct, and distribute water through said city; to erect and maintain settling basins, filtering galleries, reservoirs, water towers, pump-houses, and all other necessary buildings, engines, machinery, and other appliances and attachments necessary to and expedient for the proper operation of such works; to cross any stream in said city for the purpose of laying or extending their pipes, conduits, or aqueducts as may be necessary for the proper distribution of water throughout said city, so as to afford the most adequate supply for domestic use and the greatest protection against fire.

§ 2. That said Central City Water Works Company shall not be permitted to assign or transfer any franchise or rights or privileges acquired by it under this resolution to any water company now existing in the city of Syracuse, N. Y., or which may at any time be the successor of such water company, or to any other water company without the express permission of the mayor and common council of said city of Syracuse.

§ 3. During the progress of the work of constructing the said water works and of laying the necessary pipes and conduits said Central City Water Works Company shall not unnecessarily obstruct any street, alley, avenue, or public ground, and it shall
91 properly repair and make good any gas or sewer pipe that shall be disturbed, complete each part of the work commenced without unnecessary delay, restore the said streets, alleys, avenues, and public grounds to as good condition as they were in before said work was commenced; to restore all pavements and sidewalks that may at any time be disturbed either in the work of construction or while making repairs, and whenever such pavements

or sidewalks shall be interfered with or any excavations shall be made it shall suitably guard and protect the same so as to prevent injury to persons and property and shall indemnify and hold the said city of Syracuse harmless therefor and pay any sum or sums that may be recovered against the city in any action that may be brought against it to recover damages for injuries to person or property caused by such excavation or interference with sidewalks or pavements, and also any costs or expenses that may be incurred in said action, and said company shall also execute a bond in the penal sum of fifty thousand dollars or such sum or sums as from time to time shall be fixed by the common council, with such sureties as may be approved by such common council, conditioned for the faithful performance of the conditions imposed by this section.

§ 4. The water supply to be furnished by said Central City Water Works Company shall be obtained either from Skaneateles, Oneida, or Cazenovia Lakes or from Tully ponds in quantities sufficient for all the needs and requirements of the city of Syracuse and the inhabitants thereof, and the water to be furnished shall be such as will upon analysis by the State board of health be pronounced
92 pure and wholesome, and shall be approved by the mayor and common council of the city of Syracuse before the construction of the works of said company shall be commenced.

§ 5. The works to be constructed, the dimensions of the water mains, and the capacity of the machinery, reservoirs, and appurtenances shall be sufficient to readily supply said city of Syracuse with at least twelve million United States gallons of water each day, and shall provide for supplying pressure in case of fire at the hydrants in any part of said city as follows: At the intersection of Washington and Genesee streets and of all streets of a corresponding level, where hydrants are situated, a pressure of seventy pounds per square inch; at all other streets in said city, whatsoever the level may be, where hydrants are situated, of at least sixty pounds to the square inch.

§ 6. Said company will, without expense to the city of Syracuse, place in connection with the pipe system to be constructed not less than five hundred and twenty double-nozzle non-freezing fire-hydrants of the most approved pattern, which hydrants shall be located at distances, not more than five hundred feet apart, at such points as shall be designated by the common council, within ninety days after the acceptance of the grant herein made, and in case said common council shall fail to designate the location of said hydrants within said ninety days said company shall locate said hydrants after consultation with said common council.

§ 7. Said city may at any time require said company, its successors or assigns, to make extensions to the pipe system of
93 said company, provided said city shall order the erection of fire-hydrants upon said extension at the rate of ten to the mile.

§ 8. Said company shall, during the full term and continuance of the grant hereby made, supply water free of charge from such suitable attachments as the city of Syracuse may make, for the pur-

poses and use of the building or buildings of its fire department, the various city offices, and all public schools, and for sixteen watering troughs with automatic closing apparatus, and three public fountains; and said city shall also have the right to use, free of charge, water from all fire-hydrants during the same period for the purpose of flushing gutters and sewers whenever said city shall deem it necessary for sanitary purposes, upon giving notice to said company, its successors and assigns, at its office; said flushing to be done by it when ordered by said city. It shall also have water free of charge for sprinkling streets, such water to be delivered through special hydrants or stand-pipes erected by the city for that purpose and connected with the main pipe. It is, however, understood that not more than two hydrants shall be opened at any one time for the purpose of flushing sewers or gutters, and no one hydrant shall be opened more than twice in each week for such purpose, and that there shall be no flushing at the time of a fire.

§ 9. The said city of Syracuse reserves the right and agrees to adopt and enforce ordinances protecting said company in safe and unmolested enjoyment in the franchise hereby granted, and against fraud and imposition, injury to property, waste of water, and
94 the pollution of the source of the water supply. Nothing herein contained shall, however, create any liability upon the part of the city of Syracuse.

§ 10. The said company shall also have power to make, adopt, and enforce reasonable regulations, not inconsistent with law, which it may require all persons obtaining water from its mains to subscribe as a condition for furnishing water.

§ 11. In consideration of the premises, the city of Syracuse agrees upon the completion of the said company's works, as herein provided, to rent from said company for the period of twenty years the right to use the water to be supplied by said company, as herein provided, at five hundred and twenty hydrants and such additional number as may be ordered, and to pay therefor at the rate of fifty dollars per annum for each hydrant, provided the water furnished shall comply as to quantity, quality, and pressure, and the hydrants to be furnished by said company shall be of the character hereinbefore provided, and the said company agrees to accept, as one of the conditions upon which the grant herein contained is made, that the city of Syracuse shall have the right for said twenty years to avail itself of the right to have water furnished to it at said hydrants, and at any others that may be ordered in said city, by paying for such use at the rate of fifty dollars per annum for each of said hydrants.

§ 12. Said company shall constantly keep all fire-hydrants rented of them by said city supplied with water for fire service, and shall maintain them in effective working order and keep them in proper repair at its own expense. The chief of the fire department
95 of said city or such person as he may designate shall have the right at — time to inspect said fire-hydrants, and in case they are not in proper working order, to require the same to be forthwith repaired, and in default of such repairs said company

shall be subject to such penalties as may from time to time be prescribed by the common council.

§ 13. Said company agrees to commence the construction of its works, mains, etc., within three months after the acceptance of this grant, and to diligently, and with no unnecessary interruption, prosecute the work and complete at least forty miles of pipe and be in readiness to supply water for domestic, manufacturing, and municipal purposes from said pipes within three years from the date of such acceptance; but any delay caused by injunctions or orders of court or by malicious interference shall work an extension of time equivalent in duration to the time thus lost: Provided, however, that such delay shall in no manner be caused by said company or any one in collusion with it. And in case said company shall not comply with the terms of this condition it shall be lawful for the common council to rescind the grant herein contained and to terminate the rights and privileges hereby conferred.

§ 14. The city of Syracuse shall have the right at any time after the expiration of five years from the passage of this resolution, and said company accepting this resolution acknowledges such right, to acquire title to the works to be constructed by said company and the property appurtenant thereto by instituting proceedings similar to those provided for by the general railroad act, regulating the condemnation of real estate.

96 § 15. The said company shall, within ninety days after the approval of this resolution, file with the city clerk its written acceptance thereof, duly acknowledged by one of its officers, and in default of such acceptance all rights of said company under this resolution shall cease.

§ 16. The maximum rates to be charged by said company to private consumers in the city of Syracuse shall be in accordance with the following schedule, viz:

Bathing tubs.

Private houses, one tub, $4.
Each additional tub, $3.
In hotels, each tub, $5, $8.
In barber shops and bathing-houses, each tub, $8, $12.

Bakeries.

For each barrel of flour used daily, per annum, $5.
Additional charge for steam-engine.

Barber shops.

First chair, $5.
Second chair, $3.
Each chair after, $2.

Blacksmith shops.

One fire, $8.
Each additional fire, $4.

Building purposes.

Laying stone, per perch, 2 cents.
Laying brick, per thousand, 6 cents.
Plastering, per 100 yards, 1, 2, or 3 coats, 20 cents.

97 Dwellings.

For a family of three persons or less in a house of three rooms or less, with one faucet, $5.
For each additional faucet, not counting bath-tubs or water-closets, 75c.
For each room in addition to above three rooms, exclusive of halls, closets, or pantries, 75c.
For each member of family in addition to above three persons, 80c.

Fountains.

One-sixteenth-inch delivery, $10.
One-eighth-inch delivery, $20.
One-quarter-inch delivery, $60.
One-half-inch delivery, $130.

Offices.

Offices, except as below specified, $5, $10.
Printing offices, not including engines, $10 and $20.
Restaurants and saloons, $5, $40.

Stables.

Private, including washing carriages, one horse, $3.
Each additional horse, $2.
Livery, boarding, and sale stables, including washing carriages, per stall in use, $2.

Steam-engines.

Per horse-power, up to 20-horse power, $5.
From 25 to 100-horse power, $4.
Over 100-horse power, $3.
Stores, $5, $30.

Urinals.

In private houses, $2.50.
Public, $5.
Constant flow, $10.

98 Water-closets.

Public, first closet, $7.
Public, each additional, $5.
Private, first closet, $5.
Private, each additional, $3.
In stores, banks, and offices, $5.
Each additional, $4.

Meter rates.

500 gallons or less per day,				25c.	per	1,000 gallons.
500 to	1,000	gallons per day,		.22	"	" "
1,000 to	2,000	"	" "	.19	"	" "
2,000 to	3,000	"	" "	.16	"	" "
3,000 to	4,000	"	" "	.14	"	" "
4,000 to	5,000	"	" "	.12	"	" "
5,000 to	10,000	"	" "	.10	"	" "
10,000 to	20,000	"	" "	.09	"	" "
20,000 to	30,000	"	" "	.08	"	" "
30,000 to	40,000	"	" "	.07	"	" "
40,000 to	50,000	"	" "	.06	"	" "
Over	50,000	"	" "	.05	"	" "

For all other purposes not above enumerated prices will be subject to agreement with parties.

It is further provided that the maximum rates to be charged by said company shall in no case be greater than those now charged by any other water company doing business at said city of Syracuse or than those that may be charged by any other private water company doing business at any other city in this State having an equal or greater population than said city of Syracuse.

99 I hereby certify that the foregoing is a true copy of the original on file in this office and of the whole of said original.

[L. S.] H. W. BANNISTER,
City Clerk.

IN COMMON COUNCIL,
SYRACUSE, N. Y., *March* 23, 1885.

The accompanying resolution was adopted by the common council of the city of Syracuse at its meeting held this day.

Witness my hand and seal of the said city.

[L. S.] H. W. BANNISTER, *Clerk.*

The accompanying resolution is hereby approved by me this 23d day of March, 1885, at 8.30 o'clock p. m.

THOMAS RYAN, *Mayor.*

(A copy.)

Plaintiff's Exhibit 2.
Appears in case.
Plaintiff's Exhibit 3.
Appears in case.

PLAINTIFF'S EXHIBIT 4.

Whereas, on the twenty-seventh day of March, in the year one thousand eight hundred and twenty-one, the Legislature of the State of New York enacted that the freeholders and inhabitants of the village of Syracuse, in the town of Salina, should be authorized to

take a sufficient supply of fresh water for the use of said vil-
100 lage from any springs on the land of the people of the said State in said town, lying eastward of said village, and to carry the same across the lands of the said people to said village, and to enter on the same, to dig ditches for the laying said aqueduets, and to repair the same from time to time when necessary, with as little injury to said lands as might be: Provided, That, if such springs should be of sufficient elevation to carry into the Rome summit level of the Erie canal, nothing in said act should be construed to prevent the canal commissioners from taking the water of the same for supplying said canal in case they should deem it necessary;

And whereas by the said act the said freeholders and inhabitants of said village authorized to vote at town meetings were authorized, on a day and at a place in said act mentioned, to elect three trustees to transact all business in relation to the rights thereby granted to the inhabitants of said village to bring in water, regulate the manner of using it, fix the sums to be paid annually by those using the same, to sue in their own names, as trustees of the Syracuse water works, for all injuries done to the works erected under said act, and generally with all powers necessary to carry the purposes of said act into effect and to do other acts in said act specified, and in and by which said act the said trustees were directed to select the springs from which they intended to take the said water, and to cause a map to be made of the same, with the route by which they intended to carry the same in an aqueduct to said village, to be made at their expense and filed in the office of the surveyor general of the said State, with a declaration thereon, signed by the said trustees, that the same was made in pur-
101 suance of said act prior to the sales of the land under the act of the year eighteen hundred and twenty for that purpose, and that all sales of land by the State thereafter made, embracing such springs or the route of such aqueduct, should be deemed to be subject to the rights granted in and by said act;

And whereas the said freeholders and inhabitants of said village, in pursuance of said act, duly appointed trustees for the purposes and in the manner in said act mentioned, and said trustees thereupon selected such springs and caused a map and their declaration thereon to be made, signed, and filed as required by said act;

And whereas, by an act of said Legislature passed April 13th, 1825, to incorporate the village of Syracuse, all the rights, property, and powers of the said trustees of the Syracuse water works were vested in the said corporation, subject to the obligations of said trustees, and by which said act the several duties enjoined on said trustees in and by the act of March 27th, 1821, entitled An act to supply the village of Syracuse with wholesome water, were directed thereafter to be exercised by the trustees of said village;

And whereas, by an act of the said Legislature passed April twenty-second, A. D. 1834, entitled "An act to amend the act entitled An act to incorporate the village of Syracuse," it was enacted that the trustees of said village should have power to convey to Oliver Teall, his heirs or assigns, all the rights, property, and powers of the

Syracuse Water Works Company as vested in said village by the eleventh section of the said act incorporating the said village
102 of Syracuse for the term of thirty-five years from and after the passage of said act of April 22d, 1834; and by which said act it was also further provided that the said Teal, his heirs or assigns, should after such conveyance be possessed of all the powers, rights, and privileges which were granted in and by the said act of March 27, 1821, and of all the powers of said village in reference to that subject by virtue of the said act of April 22d, 1834, and the said act of April 13th, 1825, and that the said Teal, his heirs, executors, and administrators and assigns, might exercise in his or their own name or names all the rights and privileges granted by said act, and that he should distribute the water to such places as the trustees should direct, but that it should not be necessary for him or them during said term of thirty-five years to elect said three trustees or account for the money to be received by him or them from said works, as provided by said act of March 27, 1821; and in and by which said act it was further provided that in case said Teal, after receiving the conveyance of said rights, powers, and privileges, shall neglect to exercise them the trustees of said village should, after two years' notice, have the right to resume all the rights, powers, and privileges granted by such conveyance; and by which said act it was further provided that the sum which the said Teall, his heirs or assigns, should charge for the use of said water should not exceed five dollars for a private family, ten dollars for a boarding-house, and twenty dollars for a tavern a year, and also that the trustees of said village should have power at the expiration of said thirty-five years to reinvest themselves and take possession of said water works and all appurtenances thereunto be-
103 longing by paying at the time of so taking possession thereof, estimating said water works and appurtenances at the necessary cost of erecting such works, deducting the decrease in their value by reason of their waste and decay by time and use, by which it was further provided that in case said trustees and said Teall or his heirs, executors, administrators, or assigns could not agree upon the value thereof the same should be ascertained and determined by three disinterested appraisers, to be appointed by the supreme court of this State at the instance of either party:

Now, therefore, this indenture, made this eighth day of June, in the year of our Lord one thousand eight hundred and forty-one, between the trustees of the village of Syracuse, in the town of Salina, of the first part, and Oliver Teall, of the said village and town, of the second part, witnesseth that the said parties of the first part, for a valuable consideration to them in hand paid by the said party of the second part, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part, his heirs or assigns, all the rights, property, and powers of the Syracuse Water Works Company as vested in the village of Syracuse by the eleventh section of the act entitled An act to incorporate the village of Syracuse, passed April 13, 1825, being the same powers conveyed to the trustees of the said Syracuse

Water Works Company or to the freeholders and inhabitants of said village by the act of March 27th, 1821, above referred to and recited, for and during the unexpired portion of the term of thirty-five years from and after the twenty-second day of April, 1834; and
104 the said parties of the first part hereby authorize the said Teall, his heirs or assigns, to do, make, and perform any act in relation to the said rights, property, and powers of said company which they, the said parties of the first part, might lawfully do and perform by virtue of the said eleventh section of the act to incorporate said village, subject to the restrictions and provisions of the said act of April 22d, 1834, as before recited; and it is hereby expressly declared by the said parties of the first part that this conveyance is subject to all the restrictions and reservations contained in the said act of March 27th, 1821, and in the said act of April 22d, 1834, both of which are in substance set forth in the recital of this indenture, and to which reference is made in executing the same.

In witness whereof the said parties of the first part have caused the name of their president to be hereunto subscribed and the corporate seal of the said village to be hereunto affixed, and have caused the execution thereof to be attested by the clerk of the said village, on the said eighth day of June, in the year one thousand eight hundred and forty-one aforesaid.

HIRAM PUTNAM, *President.* [L. S.]

Attest: W. M. CLARKE, *Clerk.*

STATE OF NEW YORK, } ss:
Onondaga County, }

On the 9th day of June, 1841, personally appeared before me Hiram Putnam, president of the village of Syracuse, to me
105 known to be the person described in and who executed the within instrument, and acknowledged that he executed the same for the use and purpose therein mentioned.

JOHNSON HALL,
A Judge of Onondaga County Courts.

STATE OF NEW YORK, } ss:
Onondaga County, }

On this 23d day of July, A. D. 1842, before me came William M. Clarke, to me known to be the person described in and who executed the foregoing instrument as clerk of the village of Syracuse, and acknowledged that he executed the same as clerk at the date of said instrument. The seal thereunto attached I also know to be the seal of said village of Syracuse.

CHAS. T. HICKS,
Com'r of Deeds.

Recorded July 23, 1842, at 5½ o'clock p. m.
CHAS. T. HICKS, *Clerk.*

(Book 81 of Deeds, page 320, &c.)

Exhibit 5 same as Exhibit 4.

PLAINTIFF'S EXHIBIT 6.

Know all men by these presents that I, Oliver Teall, of Syracuse, in the county of Onondaga, in consideration of the sum of one thousand dollars to me agreed to be paid by Ira Seymour, now of Syracuse, do hereby sell, assign, convey, and deliver to him, the
106 said Ira Seymour, the equal undivided one-third part of all the rights, privileges, and property which were granted and conveyed to the said Oliver Teall by Daniel Elliott and wife by deed dated the 26th day of May, 1834, and which deed is recorded in the Onondaga county clerk's office, in Book 55 of Deeds, page 107, &c., the 1st day of July, 1834, and also the one-third of the rights and privileges which were granted and conveyed by the trustees of the village of Syracuse by a deed of conveyance granted and executed, under the seal of the village, by the president and clerk thereof on the 8th of June, 1841, and which is also to be recorded, which conveyance or the record thereof are to be referred to for a description of all that is herein and hereby granted, and also the equal undivided one-third part of all the rights, privileges, franchises, and immunities held, enjoyed, owned, and possessed by the said Oliver Teall under the laws in the last-mentioned conveyance referred to; to have and to hold the said one-third of said premises, subject to the restrictions in the laws aforesaid and in the conveyances aforesaid, to the said Ira Seymour and his heirs and assigns forever.

Witness my hand and seal this 30th day of June, 1842.

In presence of—

OLIVER TEALL. [L. S.]

ONONDAGA COUNTY, *ss:*

On the 30th day of June, 1842, came before me Oliver
107 Teall, to me known to be the person described in and who executed the within instrument, and acknowledged that he executed the same.

JOHNSON HALL,
Judge of Onondaga County Courts.

Recorded June 30th, 1842, at 6 o'clock p. m.

CHARLES T. HICKS, *Clerk.*

(Book of Deeds 81, page 231.)

PLAINTIFF'S EXHIBIT 7.

Know all men by these presents that we, Ira Seymour and Lucy, his wife, of Syracuse, in the county of Onondaga and State of New York, for and in consideration of the sum of eighteen hundred dollars to us in hand paid by Oliver Teall, of the above-named place, do hereby sell, assign, convey, and deliver to him, the said Oliver Teall, the equal undivided one-fourth part of all the rights, privileges, and property which Ira Seymour purchased of said Teall in the year eighteen hundred and forty-two, the deed for which was

recorded in the Onondaga county clerk's office, in Book No. 81 of Deeds, page 231, on the 30th day of June, one thousand eight hundred and forty-two, together with all the improvements on the said equal undivided fourth part of said property by the said Seymour purchased as aforesaid, reference being had to said deed, recorded as aforesaid, to determine such rights, privileges, and property conveyed by said Teall to said Seymour; also the equal undivided one-fourth part of all the rights, privileges, franchises, and immunities which the Legislature, any corporation, body of citizens, or citizen has (since said sale by said Teall to said Seymour) or may
108 hereafter grant to said premises mentioned as aforesaid, and also embracing one equal undivided one-quarter of one-third part of all rights, privileges, franchises, immunities, and property connected with supplying the village of Syracuse with pure and wholesome water; to have and to hold the said one-fourth part of all the rights, privileges, franchises, and immunities above mentioned to the said Oliver Teall and his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals this eleventh day of July, one thousand eight hundred and forty-three.

IRA SEYMOUR. [L. S.]
LUCY SEYMOUR. [L. S.]

Signed, sealed, and delivered in presence of—
T. H. TEALL.

STATE OF NEW YORK, } ss:
Onondaga County, }

On the 13th day of July, 1843, before me came Ira Seymour, and on this 21st day of July, 1843, also came before me Lucy, his wife, to me known to be the persons described in and who executed the foregoing instrument, and they severally acknowledged the due execution thereof. The said Lucy, on a private examination apart from her husband, acknowledged that she executed the same freely and without any fear or compulsion of her said husband.

CHARLES T. HICKS,
Com'r of Deeds.

Recorded July 21st, 1843, at 2½ o'clock p. m.
CHARLES T. HICKS, *Clerk.*

(Book 84 of Deeds, page 74, &c.)

109 PLAINTIFF'S EXHIBIT 8.

Know all men by these presents that we, Ira Seymour and Lucy, his wife, of Syracuse, in the county of Onondaga and State of New York, for and in consideration of the sum of eighteen hundred dollars to them in hand paid by Oliver Teall, of the above-named place, do hereby sell, assign, convey, and deliver to him, the said Oliver Teall, the equal undivided one-fourth part of all the rights, privileges, and property which Ira Seymour purchased of said Teall in

the year eighteen hundred and forty-two, the deed for which was recorded in Onondaga county clerk's office, Book (No. 81) of Deeds, page 231, on the thirtieth day of June, one thousand eight hundred and forty-two, together with all the improvements on the said one equal undivided one-fourth part of said property by the said Seymour purchased as aforesaid, reference being had to said deed, recorded as aforesaid, to determine such rights, privileges, and property conveyed by the said Teall to the said Seymour; also the equal undivided one-fourth part of all the rights, privileges, purchases, and immunities which the Legislature, any corporation, body of citizens, or citizen has since such or said sale by said Teall to said Seymour have or may hereafter grant to said premises mentioned as aforesaid, and also embracing one equal undivided one-quarter of one-third part of all rights, privileges, purchases, immunities, and property connected with the supplying the village of Syracuse with pure and wholesome water; to have and to hold the said one-fourth part of all the rights, privileges, purchases, and immunities
110 above mentioned to the said Teall and his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals this first day of August, one thousand eight hundred and forty-four.

IRA SEYMOUR. [L. S.]
LUCY SEYMOUR. [L. S.]

Signed, sealed, and delivered in presence of—
TIMOTHY H. TEALL.

ONONDAGA COUNTY, *ss:*

On this 19th day of March, A. D. 1845, before me came Ira Seymour and Lucy Seymour, his wife, to me known to be the same persons described in and who executed the within instrument, and severally acknowledged that they executed the same; and the said Lucy, being by me privately examined apart from her said husband, acknowledged that she executed the same freely, without any fear or compulsion of her said husband.

DANIEL PRATT,
First Judge.

Recorded March 21, 1845, at 11.30 o'clock a. m.
CHARLES T. HICKS, *Clerk.*

(Book No. 87 of Deeds, page 272, &c.)

PLAINTIFF'S EXHIBIT 9.

Know all men by these presents that I, Ira Seymour, of Syracuse, do hereby authorize and empower Amos Benedict, of Syracuse, as my attorney to sell and convey, by good and sufficient deed,
111 all my right and interest in the Syracuse water works held by me under a deed from Oliver Teall, which is recorded in Book of Deeds No. 81, page 231, in the Onondaga county clerk's office,

and also my house and lot in Syracuse, on the railroad, which was conveyed to me by the deed of Charles Merrick and Montgomery Merrick and wives and which is recorded in Book of Deeds No. 87, page 103, &c., in said clerk's office. My said attorney is fully authorized to convey either or both of said pieces of property or to mortgage or otherwise convey the same, subject only to this condition—that the written consent and approval of said sale, mortgage, or other arrangement of Oliver Teall, of Syracuse, shall be obtained by my said attorney and attached to such deed, mortgage, or assignment. Whatever my said attorney may do in the premises is hereby approved.

Witness my hand and seal this 15th of February, 1849.

IRA SEYMOUR. [L. S.]

ONONDAGA COUNTY, *ss:*

On this 15th day of February, 1849, before me came Ira Seymour, to me known to be the person described in and who executed the above instrument, and acknowledged the due execution thereof.

R. WOOLWORTH,
Commissioner of Deeds.

Recorded the 6th day of July, 1849, at 1 o'clock p. m.

LEWIS J. GILLET, *Dep. Clerk.*

(Book G of Miscellaneous Records, page 293.)

112 PLAINTIFF'S EXHIBIT 10.

Know all men by these presents that Ira Seymour, of Syracuse, in the county of Onondaga, by Amos Benedict, of the same place, his attorney, duly constituted, in consideration of the sum of one dollar to him in hand paid and in pursuance of the act entitled "An act to incorporate the Syracuse Water Works Company," passed April 5, 1849, does hereby sell, transfer, convey, and deliver to "the Syracuse City Water Works Company" all the right, interest, stock, property, and share in the Syracuse water works held and owned by the said Seymour under a deed from Oliver Teall, which is recorded in Book of Deeds No. 81, page 231, in the Onondaga county clerk's office, or in any other way, being in the whole one-sixth part of the stock, property, and interest of the said Syracuse water works; to have and to hold the same to the said "The Syracuse City Water Works Company," pursuant to the act aforesaid, forever.

Witness the hand and seal of the said Ira Seymour, by Amos Benedict, his attorney, the 3d day of July, 1849.

IRA SEYMOUR, [L. S.]
By AMOS BENEDICT,
His Attorney.

I do hereby consent to the above sale and transfer and approve of the same as contemplated in the power of attorney of Ira Seymour to Amos Benedict.

Dated July 3, 1849.

OLIVER TEALL.

113 ONONDAGA COUNTY, *ss:*

On this 3d day of July, 1849, before me came Amos Benedict, to me known to be the person described in and who executed the within instrument, and acknowledged the due execution thereof.

R. WOOLWORTH,
Com'r of Deeds.

ONONDAGA COUNTY, *ss:*

On this 3d day of July, 1849, before me came Oliver Teall, to me known to be the person described in and who executed the within instrument, and acknowledged the due execution thereof.

R. WOOLWORTH,
Com'r of Deeds.

Recorded July 6, 1849, at 1 o'clock p. m.

VIVUS W. SMITH, *Clerk.*

(Book No. 97 of Deeds, page 367.)

PLAINTIFF'S EXHIBIT 11.

Know all men by these presents that I, Oliver Teall, of Syracuse, in consideration of one dollar to me in hand paid and in pursuance of the act entitled "An act to incorporate the Syracuse City Water Works Company," passed April 5th, 1849, do hereby sell, assign, and convey all my right, interest, and property in the Syracuse water works, being five-sixths of the whole stock and property of the same, and also all the rights and interest of the said Teall acquired and derived under the leases from Jerathnael Hunt, recorded in
114 Onondaga clerk's office in Book No. 93 of Deeds, pages 25 and 27; also under a deed from John I. Hopper, recorded in same book, page 79; also under a deed from Horace B. Gates and Thaddeus M. Wood, recorded in same book, page 354, &c.; also under a deed from Charles Hissey, recorded in Book No. 92, page 575, &c.; also under a deed from James C. Young and wife, recorded in Book 91, page 494, &c.; also under a lease of John Stolp and John Stolp, Jr., recorded in Book No. 93, page 53, &c.; also under a deed of release from the children of Elizur Bissel; also under a deed of Willet Raynor; also under a deed from Hamilton White—all of which deeds are executed to me; also under a deed from Aaron Burt, recorded in same volume, page 57; also under a deed from Elanor R. Burt, recorded in same volume, page 141; also all the right acquired and derived by me under other deeds for the purpose of obtaining water and conducting the same to Syracuse; also the right to half an acre of land, including the spring or farm lot No. 202 of the Onondaga Salt Springs Reservation, reserved by me, under a contract with Freeman Hicks, to the said The Syracuse City Water Works Company; to have and to hold the same forever, subject to all the conditions and reservations contained in the conveyances to me.

Witness my hand and seal this 3rd day of July, 1849.

OLIVER TEALL. [L. S.]

ONONDAGA COUNTY, *ss:*

On this 3d day of July, 1849, before me came Oliver Teall,
115 to me known to be the person described in and who executed the within instrument, and acknowledged the due execution thereof.

R. WOOLWORTH,
Com'r of Deeds.

Recorded July 6, 1849, at 1 o'clock p. m.
VIVUS W. SMITH, *Clerk.*

(Book 97 of Deeds, page 367.)

STATE OF NEW YORK,
Onondaga County Clerk's Office, } *ss:*

I certify that I have compared the foregoing copy of a deed with the original record thereof now remaining in this office, and that the same is a correct transcript therefrom and of the whole of such original record.

Witness my hand and official seal this 21st day of July, 1866.
CARROLL E. SMITH, *Clerk.*

[Five-cent revenue stamp, cancelled.]

EXHIBIT 12.

The mayor and common council of the city of Syracuse with the Syracuse City Water Works Company.

Articles of agreement, made and entered into this tenth day of September, A. D. 1851, between the mayor and common council of the city of Syracuse, of the first part, and the Syracuse City Water Works Company, of the second part, witnesseth:

That the said party of the second part, for the considerations hereinafter mentioned, doth covenant and agree with the said
116 party of the first part that the said party of the second part will furnish at its own expense and lay down in the city of Syracuse in a workmanlike manner good, sufficient, and substantial cast-iron water pipes, commencing at the reservoir or well at the head of the reservoir on Stolp's hill, in the town of Onondaga, near the city line, and extending the same therefrom through the streets of said city, as the common council of said city shall direct, the whole not to exceed in length one thousand rods.

The main pipe is to be twelve inches in interior diameter, and is to communicate with the said reservoir or supply well, and to extend therefrom directly to the county clerk's office in said city; the branch pipes are to extend therefrom to different parts of the city, in all respects as the said common council shall direct, and are to be of the proper size for the purpose. If the parties to this instrument cannot agree upon the size of the branch pipes the size thereof shall be determined by Wm. J. McAlpine, of Albany, or by any other engineer that the parties may agree upon.

That when the said pipes shall be so laid down the party of the first part is to attach (at its option) hydrants thereto, of such size, in such numbers, at such places, and of such kind as the said party of the first part may deem proper for the purpose of drawing, receiving, using, and throwing water for extinguishing fires in the vicinity of and within the reach of said hydrants.

That the said party of the second part will furnish at all times a copious and ample supply of water from said reservoir or supply well by direct and unobstructed passage through said pipes
117 for the use of such hydrants, and for the purpose of throwing water therefrom in the extinguishing of fires.

That the said party of the second part will at all times furnish an ample supply of good, pure spring water for all purposes contemplated by these articles of agreement.

That the said party of the second part will supply with water the cisterns, school-houses, and market of the said party of the first part from any of the aqueduct logs or pipes of the said water works company, which are now or hereafter may be laid down in said city, which may be most convenient and proper for such purpose.

The same regulations as to the use of water for the school-houses and market are to be observed and kept as are applicable in all other cases when water is used by individuals, except that no charge is to be made for the same.

And that no water is to be drawn through said hydrants for any other purpose than for the extinguishment of fires.

In consideration of the laying such cast-iron pipes and of furnishing an ample supply of water as aforesaid and of faithful performance and fulfillment in all respects of this agreement on the part of said water works company the party of the first part agrees to pay to the party of the second part the annual sum of two thousand dollars, payable annually on the first day of November in each year, and the payment thereof to continue so long as the party of the second part shall supply from their springs and reservoir an ample supply of water for the purpose of extinguishing fires, and to
118 the cisterns, school-houses, and market as aforesaid as shall fulfill in all respects these articles of agreement on its own part, but not to exceed the term of five years.

But from the time when the said cast-iron pipes shall be laid from the reservoir as aforesaid down to the Syracuse House to the time when the whole work shall be completed the said party of the first part shall pay to the said party of the second part at the rate of such sum per annum as shall bear the same proportion to two thousand dollars as the sum expended at that time in the work shall bear to the estimated expense of the whole work when finished, the first payment to be made on the first day of November next after said pipes shall be laid from the reservoir down to the Syracuse House.

This agreement shall continue in force for five years from the time when the said iron water pipes shall reach the Syracuse House as aforesaid and shall be in operation to that place and from the time that water rent shall commence accruing under this agreement. The said party of the first part shall pay to the said party of

the second part no other compensation for any water than herein provided and at no other rates than herein specified.

That the whole work shall be entirely completed, all the pipes laid and in full operation, by the first day of August, 1852.

In witness whereof the mayor and clerk of said city have
[L. S.] hereunto set their hands and affixed the corporate seal of said city and on the part of said company the president and sec-
119 retary have hereunto set their hands and affixed their corporate seal the day and year first above written.

HORACE WHEATON, *Mayor.*
L. L. ALEXANDER, *Clerk.*
OLIVER TEALL,
President Syr. City Water Works Co.
GEORGE BARNES,
Secretary Syr. City Water Works Co.

Articles of agreement, made this eleventh day of July, A. D. 1853, between the mayor and common council of the city of Syracuse, the party of the first part, and the Syracuse City Water Works Company, the party of the second part, witnesseth: That the party of the second part, for the consideration of the agreements hereinafter contained on the part of the party of the first part, hereby covenants and agrees to and with the party of the first part to furnish and lay down at its own expense, in a good, workmanlike manner, in the city of Syracuse, good sufficient cast-iron pipes for the supplying of said city with water from the following points and through the following streets, viz:

One pipe commencing in Church street, thence north through N. Salina street to Wolf street; thence through Wolf street to Park street. The first three hundred rods of said pipe to be eight inches in diameter; the balance, 200 rods, six-inch diameter.

Also one pipe commencing in Lock street, thence through James street to Lodi street; pipe to be six inches in diameter.

Also one pipe commencing on Genesee street, thence south
120 through Franklin street to Mechanic street; thence west through Mechanic street as far as the gas works; pipe to be four inches in diameter.

Also one pipe to commence in Church street, at the extremity of the iron pipes as laid last year, thence west through Church street to Genesee street; four-inch pipe.

Also one pipe six inches in diameter, commencing at the extremity of the iron pipes west of Fayette park, running thence through Genesee street, east and south of said Fayette park, to Grape street.

Also one pipe four inches in diameter, commencing in Salina street, running thence through Fayette street to the Nelson block, so called.

Also one pipe four inches in diameter, commencing in Salina street, running thence west through Railroad street to Franklin street, east side.

It is understood that where any of the above-mentioned pipes are

already laid in whole or in part they shall so far be taken as a compliance with this agreement.

The party of the second part hereby further agrees to connect each of said pipes with the main pipe, and at all times supply each and every one of them with a copious and ample supply of water from the reservoir or supply well of said company by direct and unobstructed passage through the aqueducts and pipes connecting with the above-mentioned pipes and each and each and every of them and leading to said reservoir or supply well, or such as is now by said company erected for the use of such hydrants as said city may attach to said pipes, and for the extinguishment of fires by throwing water therefrom.

121 The said party of the second part further agrees at all times to furnish and supply said pipes with an ample supply of spring water for the purposes contemplated by this agreement and their act of incorporation.

That the party of the second part will supply with water the cisterns, school-houses, and market of the party of the first part from any of the aqueducts, logs, or pipes now laid or which may be laid under same regulations as to the use of the water as are applicable to individuals, but no cistern shall be supplied from any iron pipe.

The party of the second part hereby agrees that said city may attach, at its option, hydrants to said pipes, when the same shall be laid down, of such size, in such numbers, at such places, and of such kind as the said party of the first part may deem proper for the purpose of drawing water therefrom for the extinguishment of fires and for no other purpose.

In consideration of the laying of such cast-iron pipes and of furnishing an ample supply of water as aforesaid and of faithful performance and fulfillment in all respects of this agreement on the part of said water works company, the party of the first part agrees to pay to the party of the second part the annual sum of ten hundred and four dollars ($1,004.00), payable annually, the first payment to be made in one year after said company shall, in the opinion of the mayor, have incurred one-half of the expense of the work; the payments to be annually thereafter. The payments to continue annually so long as said water works company shall supply from their springs and reservoirs an ample supply of water for extinguishment of fires, for the cisterns, school-houses,

122 and market; but this agreement to expire and said payments to cease on the 20th day of November, 1857.

It is hereby agreed that all of said pipes shall be laid and work completed within eleven months from this date.

It is the intention of this agreement simply to fix the rate of compensation for the use of water during the said term, on the termination of which new rates are again to be established by the parties if they can agree thereto.

The said party of the first part shall pay to the said party of the second part no other compensation for any water from the pipes herein agreed to be laid down than herein provided, and at no other

rates than herein specified for the water to be taken from the pipes herein agreed to be laid down.

In witness whereof the mayor and clerk of said city have hereunto set their hands and affixed the corporate seal of said
[L. S.] city on the part of the party of the first part, and on the part of the second party the president and secretary of said
[L. S.] water works company have hereunto set their hands and affixed the corporate seal of said The Syracuse City Water Works Company.

Done at said city July 13, 1853.

OLIVER TEALL, *President.*
GEORGE BARNES, *Secretary.*
D. McCARTHY, *Mayor.*
L. L. ALEXANDER, *Clerk.*

The contract between the mayor and common council of the
123 city of Syracuse and the Syracuse City Water Works Company, dated July 11, 1853, among other things, states the said company are to receive $1,004 one year after said company have, in the opinion of the mayor, incurred one-half of the expense of said work, and annually thereafter during the continuance of said contract.

I certify that in my opinion and from the certificates of the city surveyor and Charles A. Wheaton, who furnished the pipe, now presented to me, the one-half of the expense of said contract was incurred on the first day of September, 1853.

Dated December 7, 1853.

(Signed) D. McCARTHY, *Mayor.*

Articles of agreement, made this eleventh day of July, A. D. 1853, between the mayor and common council of the city of Syracuse, the party of the first part, and the Syracuse City Water Works Company, the party of the second part, witnesseth: That the said party of the second part hereby covenants and agrees to and with the party of the second part to excavate and build upon the land south of the present reservoir a fire reservoir and connect the same with the aqueduct leading into the city.

Said reservoir is to be built so as to give at least twenty feet more head of water than the present reservoir. The reservoir is to be built of capacity sufficient when full to hold not less than fifteen hundred thousand gallons of water.

Said water works company hereby covenants and agrees to build said reservoir, furnish the land and all material, and do all the work and in the manner above specified, in good, workmanlike
124 manner, and keep the same in good repair and — all times, so that the said city may have at least twenty feet more head of water than is or can be furnished by the present reservoir, and at all times keep the same connected with the aqueducts and iron pipes leading into the city by an unobstructed communication, by a sufficient pipe.

In consideration of the above agreements on the part of the party

of the second part, the party of the first part, upon the completion of the work mentioned above in the manner and according to the stipulations herein contained, agrees to pay to the party of the second part each year thereafter the sum of one hundred and ninety-four dollars and seventy-nine cents, to be made to the party of the second part or its successors in office so long as the party of the second part shall continue to keep said reservoir in repair, as above agreed; the first payment to be made to the party of the second part in one year from the first day of July, A. D. 1853.

This agreement is to cease and be of no force or effect or of any binding obligation upon either party after the 20th day of November, A. D. 1857, and all the rights of the city in the premises are to cease under this contract.

In witness whereof the mayor and clerk of said city have hereunto set their hands and affixed the official seal of said
[L. S.] city on the part of the party of the first part, and on the part of the party of the second part the president and sec-
[L. S.] retary of said company have hereunto set their hands
125 and affixed the corporate seal of said company on this 13th day of July, A. D. 1853.

OLIVER TEALL, *President.*
GEORGE BARNES, *Secretary.*
D. McCARTHY, *Mayor.*
L. L. ALEXANDER, *Clerk.*

This agreement, made November 1, 1855, between the city of Syracuse and the Syracuse Water Works Company, witnesseth:

That in consideration that the said company has, in pursuance of the resolutions of the common council from time to time up to this date, laid down the following iron water pipes in said city not embraced in any former contract, to wit:

Three hundred and forty-one $\frac{96}{100}$ rods of four-inch pipe, of the value of eleven dollars for $233\frac{96}{100}$ rods, and fourteen dollars for one hundred and eight rods; $231\frac{51}{100}$ rods of six-inch pipe, of the value of twenty dollars, and $254\frac{42}{100}$ rods of eight-inch pipe, of the value of twenty-two dollars; all of said pipe amounting in value to the sum of fourteen thousand four hundred and thirteen dollars, ($14,413.00):

Now, therefore, in consideration that the said water works company shall, without charge to said city, furnish all water which may be needed along the line of said pipes, for hydrants, fire, reservoirs, or public schools, for the term of five years from this date, the said city of Syracuse agrees to pay said water works company six per cent. on the said sum of $1,413.00, payable annually from this date;
and the said water works company agrees to furnish all water,
126 needed by said city of Syracuse for five years from this date, along the line of said pipes, for hydrants, fire reservoirs, and public schools, upon the above terms.

After the expiration of this contract the price herein agreed to be paid is not to have any binding effect upon either party, and the

further use of said water is to be left open for negotiation the same as though this contract had not been made.

H. SHELDON,
Comptroller, City of Syracuse.
OLIVER TEALL, *President.*

PLAINTIFF'S EXHIBIT 13.

Resolutions of Common Council and Reports of Committees.

1847, Nov. 8. Page 183.

Resolved, That Oliver Teall or any other persons who do or may hereafter represent the Syracuse Water Works Company, their representatives and assigns, may at any time hereafter introduce into the village water from any spring or springs which they or any of them may select, subject to the usual conditions of not permitting the streets to be injured by their operations nor unnecessarily incommoding the public; and provided, also, that the water introduced shall be better than that now introduced.

1848, July 5. Page 94.

Resolved by the common council of the city of Syracuse, That Oliver Teall or any other person who do- or may represent the Syracuse Water Works Company, their representatives and assigns,
127 may hereafter introduce into and distribute through said city water from the Furnace brook, so called, subject to the conditions mentioned in resolutions passed by the trustees of the village of Syracuse the 8th day of November, 1847, in relation to the streets; and that the said Teall and his representatives aforesaid be at liberty to charge and receive the same compensation for the use of said water as he is authorized to charge for water now introduced from other sources.

1849, Jan. 16. Page 195.

The petition of O. Teall and Ira Seymour for the common council to sanction the application for an act to incorporate the Syracuse Water Works Company. Referred to committee of the whole and granted.

1849, Feb. 7. Page 243.

Alderman Lawrence offered the following preamble and resolutions, which were adopted:

Whereas a bill has recently passed the senate of this State to incorporate the Syracuse City Water Works Company; and whereas said bill has this day for the first time been presented to the common council of said city for their inspection, and the same having been examined by said council and many of the provisions disapproved and deemed to be oppressive toward said city and others; therefore

Resolved by said common council, That said bill ought not to become a law without important amendment.

On motion,

Resolved, That the clerk make a copy of this preamble and resolution and forward the same to Hon. Joseph Slocum immediately.

On motion,

128 Resolved by the common council of the city of Syracuse, That a committee of five (part of whom shall be selected from the citizens and part from the board) to examine the bill to incorporate the Syracuse Water Works Company and propose amendments to the same.

The mayor appointed as such committee Aldermen Lawrence and Lynch, the city attorney, James Noxon, and Stephen Caldwell.

1849, Feb. 12 and 13. Page 253.

Council in session and agreed upon form of law that might be passed without objection of common council.

1849, March 7. Page 274.

Resolved by the common council of the city of Syracuse, That on the amendments heretofore agreed upon between the said common council and Oliver Teall, representing the Syracuse City Water Works Company, being engrafted into the bill incorporating the Syracuse Water Works Company, that the opposition to the said bill on the part of said common council be withdrawn, and the resolution heretofore passed by said council in opposition to said bill be rescinded.

1849, March 19. Page 299.

Resolved by the common council of the city of Syracuse, That they approve of inserting in the act to incorporate the Syracuse City Water Works Company a provision authorizing said company to take streams, pools, &c., of water without the city of Syracuse: Provided, however, that said company leave a sufficient supply for all domestic purposes.

129 1849, May 7. Page 353.

The following preamble and resolution were adopted:

Whereas the Syracuse City Water Works Company proposes to bring in and distribute through said city for use the water of Furnace brook, so called, in the town of Onondaga, in pursuance of the act incorporating said company; therefore

Resolved by the common council of said city, That we approve of the quality of said water and of the same being brought in by said company as aforesaid.

Resolved by the common council of the city of Syracuse, That the Syracuse Water Works Company be required in all cases when they shall remove any pavement in said city for the purpose of constructing their water works that the same shall be done and again relaid by an experienced and skilful man in constructing pavements, and that all such excavations and relaying the same shall be so done as

to leave the street as near as may be in the same permanent and finished condition as it was before any such excavation, and that said company so construct their said water works through said streets as to prevent all leaks in said streets.

1850, Jan. 7. Page 525.

The report of the Syracuse City Water Works Company was received and ordered published.

1851, April 21. Page 357.

Resolved by the common council of the city of Syracuse, That the Syracuse City Water Works Company is hereby requested to furnish water to the said common council for extinguishing fires,
130 and for other purposes pursuant to section 16 of the act entitled "An act to incorporate the Syracuse City Water Works Company," passed April 5, 1849, at the reservoirs and hydrants now made and others to be constructed hereafter, terms to be agreed upon or prescribed as provided in said section, for which it is considered best to bring the large reservoirs on Stolp's hill into use.

1851, April 28. Page 443.

Resolved, That a special committee of three be appointed to confer with the Syracuse Water Works Company upon the subject of furnishing the city with a more copious supply of water and the erection of hydrants for the extinguishment of fires.

1851, August 25. Page 458.

The following report of a special committee, having been laid on the table at a previous meeting, was called up, read, accepted, and ordered published at length.

The committee appointed July 28 to confer with the Syracuse City Water Works Company upon the subject of furnishing the city with a more abundant supply of water for extinguishing fires report that they have visited and examined the springs from which the present supply of water is obtained, and find that they are collected and conducted to one general head in a permanent and economical manner and in such a way as to perfectly protect the water from filth and reptiles.

It is ascertained by our surveyor that the springs thus collected are now discharging at the rate of 411 gallons per minute,
131 which is 23,633 gallons (or 392 hogsheads) per hour. There are other springs in the vicinity which may be added at a trifling expense, and which would probably add one-eighth to the present supply.

The water is now conducted by a stone aqueduct to a point near the main reservoir on the Cinder road, where, at a point about — feet above the level of the street at the Syracuse House, it enters the logs which conduct it to and through the city. This head, — feet or thereabouts, is as much as the company think they can with safety put upon their present logs, but had they suitable iron pipes laid they could give to the city the benefit of the full head from their

reservoir, which is ascertained to be about 80 feet at the surface above the curbstone at the Syracuse House, and which your committee are clearly of the opinion would, if brought in pipes of a sufficient size, be sufficient for the extinguishment of fires in the greater part of the city by throwing directly from the hydrants without the use of engines.

With these facts and conclusions before them your committee, in view of the vast benefits to be derived, proceeded without hesitation to negotiate with the company for the laying of iron pipes and furnishing the city in the best possible manner.

After much consultation and many propositions which were presented in different forms your committee have accepted that which is hereby submitted for your consideration, and do respectfully recommend that a contract be entered into in the terms therein proposed, provided the details can be made satisfactory to the council or a committee appointed for that purpose.

132 The following proposition from the water works company, referred to above, is as follows, viz:

The Syracuse Water Works Company submit to the city that they will lay down iron pipes from their main reservoir through the principal streets of the city, as may be selected by the common council, to the extent of not exceeding 1,000 rods, which the said city may use for fire purposes by attaching hydrants to the same as they may see fit. The city may also supply their cisterns and reservoirs from any of the logs of said company now laid down, and also their school-houses and market as they shall see fit.

For the above the city shall pay annually to the said company the sum of $2,000, and the company reserves the right to submit the same to the appraisal of commissioners appointed by law at any time they shall feel it their interest to do so; and if they shall not determine to submit to said appraisal, then this contract shall continue for five years from the time the iron pipes shall be laid to the Syracuse House.

The subject-matter was referred back to the committee to settle the details of a contract with the water works company and submit the same to the council for execution.

1851, September 8. Page 473.

The contract presented by the city attorney with the water works company was read and approved.

On motion of Alderman Pope, the mayor and clerk were authorized to enter into contract with the Syracuse Water Works Company for laying down 1,000 rods of iron pipes for bringing water to the city for the extinguishing of fires.

133 Alderman Taylor offered as an amendment that the subject-matter be laid on the table until a full board was present.

Amendment was lost. Ayes and noes were called for on the original motion with the following result:

Ayes—Aldermen Herrick, Hatch, Pope.

Noes—Aldermen Burton, Taylor, Higgins.

The mayor gave his casting vote in the affirmative.

1851, Dec. 15. Page 518.

Alderman Pope offered the following motion: That a special committee of three be appointed to direct the Syracuse Water Works Company in relation to location of the pipes which are to be laid by said company, the size and location of the openings for the hydrants; also to negotiate for a suitable number of hydrants and to take a general supervision on the part of the city in all matters connected with the furnishing of the city with water, as contemplated by the contract recently entered into with said company. Committee on streets were appointed such committee.

1852, July 6. Page 93.

Time for laying iron water pipe by water works company extended to Nov. 1st.

1852, Oct. 4. Page 124.

Petition of water works company called up and time extended to Nov. 20 for laying iron pipes.

1852, Nov. 29. Page 145.

Resolved, That it is hereby agreed on the part of the city that if the citizens of James street, by private subscription or other-
134 wise, induce the water works company to extend their iron pipes through James street as far as Lodi street before the first day of July next a suitable number of hydrants (not less than five) shall be immediately erected thereon by the city to protect the property on and near said street from fire. Adopted.

1852, Dec. 27. Page 154.

Alderman Burt, from the committee on the communication of the Syracuse Water Works Company for settlement of accounts, report—

That the sum of $256.96, for water use for cisterns of the market and school-houses and for putting in hydrants previous to April 21, 1851, is in accordance with charges paid by the city previous to the time, and is, in the judgment of your committee, correct; therefore they recommend said amount to be paid said company.

And, further, your committee would respectfully represent that for water furnished the city for fire purposes by said company (in accordance with a certain resolution adopted by the common council April 21, 1851) from that date to Nov. 20, 1852, no price has ever been fixed upon; that the water company asked pay for the same at the rate of $1,300 per year.

In the opinion of your committee the price above named is perhaps high; but in consideration of the fact that from Nov. 20, 1852 (the time to which this account is made up *to*), for five years to come, the water company are bound to furnish the city with all the water they want for fire and other purposes for the sum of $2,000 per year,

which price is, in the judgment of your committee, correspondingly low; therefore they would recommend that the sum of $1,800 be paid the said water company for the time above mentioned. Accepted and laid on the table.

135

1853, Jan. 24. Page 165.

The resolution in relation to amount due water works company laid on the table 27th Dec., called up, amended, and laid on the table till Saturday evening, 29th inst.

1853, Jan. 29. Page 166.

The following resolution was called up and adopted:

Resolved, That a draft be drawn in favor of the Syracuse City Water Works Company for ($1,656.96) one thousand six hundred fifty-six dollars and ninety-six cents, in full to Nov. 20, 1852.

1853, Feb. 14. Page 174.

Resolved, That a committee of three be appointed to confer with the Syracuse City Water Works Company in relation to making a contract with said company for the extension of their works, and report to this council at their next meeting. Adopted.

1853, March 3. Page 179.

Alderman Crippen, from the special committee in relation to extending iron water pipes, report that they have conferred with the president of said company and would recommend the laying of 135 rods of 12-inch pipe to connect with the contemplated reservoir which said company is about to construct, and the head of the present iron pipe already laid by said company for fire purposes.

Also an extension of said pipes from their present termination, by the county clerk's office on Salina street, 350 rods down Salina street, with 8-inch pipe, and to be continued with 6-inch pipe on said street to the intersection of Wolf street, and thence north on Wolf street to Park street, provided said company will engage to complete said work the coming season, at an expense not exceeding $1,000 per annum. Adopted.

136

1853, March 5. Page 183.

Alderman Williams presented the following resolution, which, with the petition of the water works company, was laid on the table:

Resolved, That the mayor and clerk are authorized to execute and deliver to the Syracuse City Water Works Company an instrument in writing, under seal, allowing said company to use the water of Harbor brook for supplying the city with water, and to direct the same with proper aqueducts, and to lay down, maintain, and repair such aqueducts across the lands purchased by the city for a poor and work house and hospital, reserving, however, sufficient water for the use of the poor-house and its appurtenances.

1853, March 28. Page 205.

Resolved, That a committee of three be appointed by the mayor to confer with the Syracuse City Water Works Company, and that said committee be authorized to close a contract with said company in regard to the extension of the iron pipes, as contemplated by a resolution of the former board. Adopted.

1853, March 28. Page 209.

137 Resolution of Alderman Williams, laid on the table March 5th, was called up, amended, and adopted as follows:

Resolved, That the mayor and clerk are hereby authorized to execute and deliver to the Syracuse City Water Works Company an instrument in writing, under seal, allowing said company to use the waters of Harbor brook for supplying the city with water, and to direct the same by proper aqueducts, and to lay down, under the direction of the common council, maintain, and repair said aqueducts across the lands purchased by the city for a poor and work house and hospital, reserving, however, sufficient water for the use of said poor and work house and hospital and its appurtenances.

1853, June 6. Page 248.

Alderman Crippen, from the special committee to whom was referred the subject of extending the iron water pipes down Salina street 300 rods from the county clerk's office, with eight-inch pipe, and the balance of the distance with six-inch pipe, to the intersection of Wolf and Park streets, and the extension of the twelve-inch pipe, say, about 40 rods, to connect with the new reservoir about being constructed by the Syracuse Water Works Company, would recommend entering into contract with said company for the completion of said work at as early a day as practicable, at an annual expense not exceeding $875. Adopted.

1853, June 27. Page 269.

Alderman Gardner, from the special committee on the petition of sundry residents on the south side of Fayette park, in regard to extending water pipes along said line—

138 Report that they have had a conference with some of the petitioners and with the president of the water works company. Said company agree to lay down a six inch pipe, beginning at a point intersecting the pipe already laid in front of the Park church and running east along the south side of Fayette park to the northeast corner of Grape and Genesee streets, for a sum to be paid by the city, not exceeding $175. This amount is considered by your committee as a bonus to the company for the privilege of having access to the water (at such rate as shall be hereafter agreed upon) for a hydrant, which your committee would recommend be attached to the southeast corner of Grape and Genesee streets.

As the water works company have already laid at considerable expense a tier of wooden logs along the course mentioned, and as no further outlay by them would be deemed necessary for many years,

your committee deem it no more than just that they should receive a partial remuneration in consideration of the benefits to be derived by the city in case of fire. That this appropriation should be made and the work immediately commenced, they therefore offer the following resolution:

Resolved, That the sum of $175 be appropriated for the above object, and that a hydrant be erected as recommended; also that a committee be appointed to carry out the spirit of this report.

Alderman Williams moved the following amendment to the report by striking out "at such rate as shall be hereafter agreed upon" and inserting "free of expense to the city" after the word "hydrant." Report as amended was adopted.

139 1853, July 11. Page 279.

City attorney, from special committee for that purpose, presented and read a contract with the Syracuse City Water Works Company for the further supply of water for fire purposes. Referred to the mayor, clerk, and city attorney to complete and execute.

1853, November 14. Page 338.

Resolved, That a draft be drawn in favor of the Syracuse City Water Works Company for $1,890.40, with interest from November 1st, for the amount due on the 1st instant for water furnished the city, as per contract dated September 10, 1851. Adopted.

1853, Dec. 12. Page 349.

Resolved, That the Syracuse City Water Works Company be allowed to lay their water pipes from Fayette (formerly Lysander) street to the north end of Niagara street. Adopted.

1854, April 17. Page 62.

Alderman Durkee, from the committee on water works, on the petition of J. R. Lawrence for hydrants, &c., reported that the water works company offer to contract to lay water pipes in the city for six per cent. on the cost for five years, and recommend that the comptroller be instructed to enter into a contract with the company on these terms. To committee of the whole.

1854, May 29. Page 142.

Resolved, That the superintendent of streets be, and he is hereby, authorized to make such arrangements with the Syracuse Water Works Company as are necessary to secure the placing of the
140 iron water pipes through that part of Water street which is now being paved, thereby to protect the pavement from being torn up after the present work of paving is completed, the whole to be done without expense to the city. Adopted.

1854, May 29. Page 145.

Resolved, That the comptroller be, and he is hereby, instructed to report at the next meeting of this council the terms of a contract

to be made with the water works company for laying water pipes in the city. Adopted.

1854, June 4. Page 154.

The comptroller reported that the best terms on which the Syracuse Water Works Company will extend iron water pipes in the city are to pay said company six per cent. on the cost of such pipes for the term of five years.

1854, June 5. Page 154.

Resolved, That the Syracuse City Water Works Company be required to place iron pipes in place of the wooden ones now in use through that part of Water street which is now being paved, the work to be done before the present work of paving is done, and that forty rods agreed to be laid down in Fayette street under the contract of last year be transferred to Water street. Adopted.

1854, June 5. Page 156.

Resolved, That the comptroller be empowered to execute a contract with the Syracuse City Water Works Company according to the terms and conditions reported this evening. Adopted.

141 1854, June 26. Page 176.

Resolved, That the comptroller be, and he is hereby, authorized to make a contract with the water works company to lay down cast-iron pipe in Fayette street from Warren street to the Nelson block forthwith. Adopted.

1854, June 26. Page 177.

Resolved, That water pipes be laid on the north side of Salina street from Wolf street to Exchange street and a hydrant set at the corner of Salina and Exchange streets, and also from Crippin's store to Carbon street and a hydrant set near the school-house, and also on Ash street from Salina to McBride street and a hydrant set on the corner of Ash and Townsend streets and another on the corner of Ash and McBride streets and another on the corner of Wyoming and Fayette streets, and that the water be conducted into the school-houses on Wolf and Ash streets in the same manner as it is done in the school-house in the Fifth ward. Adopted.

1854, Oct. 2. Page 284.

To the hon. the common council of the city of Syracuse:

The undersigned, the president of the Syracuse City Water Works Company, respectfully requests that a committee of three be appointed to confer with him as said president or with the board of directors in regard to certain improvements now contemplated by said company in regard to extending the facilities for the introduction of a further supply of the water in the city, and also to examine

as to the quantity and price of all iron pipe heretofore laid
142 down and not embraced in any previous contract or settlement.

OLIVER TEALL, *President.*

1854, Oct. 23. Page 304.

The comptroller, from the committee to consider the matter of contracting with the water works company for extending their iron pipe from its present termination on West Fayette street west along the line of the Split Rock plank road for the distance of two hundred and fifty rods, reported favorably to the making of such contract on these conditions:

First. That said company shall put down such pipe of eight-inch capacity at a cost of $25 a rod.

Second. That said company shall bring in the water of Harbor brook (so called), to be taken from the point where the saw-mill is situated on said stream, and connect the same with said pipes.

Third. That the interest which the city shall pay upon said pipes be six per cent. for five years and to commence when one-half of the said pipes are laid down.

Fourth. That the streets through which the pipes pass shall not be disturbed until next spring. Adopted.

1854, Nov. 27. Page 329.

Petition of Oliver Teall, president of the water works company, for including in their contract with the city one hundred rods of water pipe on Fayette street west of West street.

1854, December 11. Page 341.

The comptroller, from the special committee to whom was referred the petition of the water works company for including in
143 the city contract one hundred rods of pipe on Fayette street west of West street, reported favorably. Adopted.

1855, March 12. Page 390.

Resolved, That the Syracuse City Water Works Company be, and they are hereby, permitted to vary from their contract in relation to bringing Harbor brook into the city to the extent of laying their logs through Seymour street instead of Fayette street, provided it be done without any additional expense to the city. Adopted.

1855, Sept. 10. Page 240.

Resolved, That the Syracuse Water Works Company be, and they are hereby, allowed to lay eight-inch iron pipe instead of wood logs from Seymour street through Geddes street to Fayette street and through Fayette street to connect with the iron pipe laid in Fayette street under the conditions of the original contract. Adopted.

1855, Sep. 24. Pape 248.

Resolved, That the Water Works Company be required to lay a

four-inch pipe from Salina street through Turtle street to Spring street; through Spring street from Turtle street to Bear street; through Park street from Turtle street to Washington square; through Carbon street from Turtle street to Bear street; through Wolf street from Park street to Carbon street.

1856, June 16. Page 175.

Resolved, That water pipes four inches in size, the expense not to exceed $11.50 per rod, the city to pay six per cent. on the cost, as per former contracts, be laid through Turtle street from Salina
144 street to Carbon street; through Park street from Turtle street to Washington square; through Carbon street from Turtle street to Bear street; through Wolf street from Park street to Carbon street; also that fifty rods be laid on West Genesee street, commencing at Church street and running west on Genesee street; also on East Fayette street from their present terminus sixty rods east; also on Jefferson street from Warren street to the east end of Forman park; also from Salina street to Park street through Court street; and the comptroller is hereby directed to enter into contract with said company to lay their pipes as above.

Alderman Bagg moved to fix the rate of interest to be paid at three and one-half per cent. Lost—2 to 12. And the resolution was adopted—13 to 1.

1856, July 14. Page 218.

Resolved, That iron water pipe be, and hereby is, ordered to be laid through Onondaga street from Salina street to opposite the premises of S. W. Ketchum. Adopted.

1856, Aug. 4. Page 246.

Resolved, That the common council of the city of Syracuse do hereby give their approbation and consent that the Syracuse City Water Works Company take for the purpose of their incorporation the waters from "Harbor brook," so called, and also the water from any springs or streams which now or hereafter may run into said brook. Adopted.

1856, Oct. 13. Page 320.

Resolved, That the comptroller be, and he is hereby, directed to notify the Syracuse City Water Works Company that the
145 company will be expected to fulfill their contract with the city by laying the water pipe in the First ward ordered by this council June 16th last. Adopted.

1856, Nov. 10. Page 345.

Communication from T. G. Alvord and others, asking an investigation of the cause of the failure of the supply of water in the First ward on the night of the 7th inst. Referred to special committee.

Report of Special Committee.

The select committee to whom was referred the communication of Thomas G. Alvord and others, relating to the want of water from the hydrants at the fire in the First ward of this city on the morning of the 8th of November past, report—

That the committee have had under consideration the said want of water, and, for the purpose of ascertaining the cause, have held frequent meetings, and have called before them and examined under oath some twenty or more persons who were supposed to know anything calculated to obstruct the free passage of water from the upper reservoir through the main pipes to the First ward at the time of the fire.

In the opinion of the undersigned the testimony taken fully establishes the fact of the entire want of water for any useful purpose of extinguishing the fire in the First ward for at least one hour or more after the fire broke out; and the man in the employ of the city water works company having charge of the gate near the Old Line House swears positively that he opened the gate at 10 o'clock on the night of the 7th of November last past and did not close it until the next day in the afternoon.

146 It has been claimed by the city water works company that the hydrants were open at J. P. Haskins' or Clark & Alvord's mills, drawing the water off in that direction and preventing a head at the fire, their hydrants being much lower than those on Salina street. On the 27th inst. the committee caused hose to be attached to two hydrants on Salina street, in the First ward, and found a flow of water in abundance; and then, with one hydrant in Salina street and one at Clark & Alvord's mill, no perceptible difference was seen, the flow of water being the same in one place as in the other.

The committee, from all the facts and circumstances before them, believe that the flow of water was interrupted by some gate between the First ward and the reservoir being partially closed, and that the same was opened after the fire had been raging about one hour; but the committee have been unable to find any evidence where the interruption was, leaving the real cause of the limited supply of water, so far as direct evidence is concerned, as yet buried with the complicated underground machinery and pipes of the city water works company.

The undersigned deem it but justice to say that they have seen no evidence of any intentional wrong or bad faith on the part of the city water works company or the officers thereof, but seem to manifest a desire to perform their engagements with the city in good faith as far as in their power.

As hydrants are to be used at least as one of the efficient means of putting out fires (of which our city seems to be in the way of its full share), the committee would feel that they had left

147 undone a very important part of their duty should they neglect at this time to call attention of the common council to the importance of an ample supply of water for fire purposes and urge the necessity of their adopting some effectual plan of furnish-

ing at all times a free and copious supply of water through the pipes to all parts of the city, so that hereafter our fellow-citizens may not have cause to complain that they are suffering for the common necessary of life, as well as for homes and houses to shelter themselves and families, and all for want of water.

C. B. WILLIAMS.
T. R. PORTER.
N. WATSON.
N. H. WHITE.
H. CHURCH.

1857, April 20. Page 35.

Resolved, That the mayor and clerk are hereby directed to contract with the water works company to lay iron pipes through Salina street from Onondaga street to Jackson street, through Jackson street to Grape street.

1857, July 27. Page 139.

Resolved, That the Syracuse Water Works Company are hereby required to lay their water pipes heretofore ordered by this council, as required by law.

1857, September 28.

The following account of the water works company was presented and referred:

148 The city of Syracuse to the Syracuse Water Works Co., Dr.

1857.			
1 July.	To amount of water rent to this day from 1 Nov. last, at $2,000 per year, as per contract	$1,333	34
"	To amount unto this day from 1 Nov. last, at $1,004 per year, as per contract	669	34
"	To amount of do. from 1 Nov. last, at $194.79, as per contract, 129.86	576	52
"	Amount of do. from 1 Nov. last, at $864.78 per year, as per contract	576	52
		$2,709	06
"	To amount in. from 1 Sept. last for 572.24 rods, at $12 per rod, is 6,867; at 6 per cent. per year is 412.02; to July last is	343	35
"	To amount in. on pipe laid from Wolf street to Alvord's mill, 61 rods, at $12, is $732; 6 per ct. is 43.92; from 1 Sept. last to July last is	36	60
		$3,089	01
"	To amount in. on Washington street from Genesee street to Beach street is 358.60 rods, at $12, is 4,303.20; at 6 per ct. is $258.19; from 1 Sept. to 1st July last	215	16
		$3,309	17

(The last item was left for future consideration.)

149 1857, October 26. Page 207.

The following report was made and agreed to:

The committee on water works and fire department, to whom was referred the account of the Syracuse Water Works Company to July 1st, 1857, after giving the matter a proper consideration, would respectfully report that the account is correct and in accordance with the contracts with the city, excepting the charge for pipes in R. R. street, which is deducted and reserved for future investigation. We recommend the payment of the account at the sum of $3,089.

The committee on water works and fire department would further report that, after a conference with the directors of the Syracuse Water Works Company and an examination of the statements of receipts and expenditures of the company for the past few years, we respectfully recommend—

1st. That the several contracts heretofore made be held as having terminated on the first day of July, 1857; that future contracts be made for each year, to commence July 1st.

2d. That the contract for the year commencing July 1st, 1857, be made with the company to include all the pipes laid and mentioned in the several previous contracts, together with such pipes as have been or may be laid this season, and that the compensation to the company be fixed at the rate of seven per cent.

It is proper that the reasons for recommending that the contracts should all terminate and commence on the first day of July should be stated. The main contracts, amounting to more than two-thirds of the whole water tax, terminated on July last; one con-
150 tract, involving an annual tax of $576, does not expire until next year; the remaining unexecuted contract, amounting to $343, comprises all the existing obligations of the city. It appears to the committee best that the whole of the water tax should be consolidated in one contract, commencing at a fixed time in each year, and that the term should be for one year only. If the receipts of the water company in the coming year shall increase, as the probabilities are that they will, then the question of reduction of percentage will be a proper subject for the consideration of succeeding common councils.

GEO. SANFORD,
A. B. HOUGH,
N. WATSON,
} *Committee.*

1857, November 2. Page 217.

Resolved, That the compensation to be paid the Syracuse Water Works Company for pipes laid heretofore or to be laid this season be fixed by this common council for the year commencing July 1st, 1857, at the rate of seven per cent. The mayor and clerk are hereby authorized to execute such contract.

1858, June 14.

Resolved, That the committee on water works be, and is hereby,

directed to call on the water works company and ascertain what they intend to do in regard to laying water pipes ordered by this council. If they propose to lay them, to do so immediately in the order directed by the council. Adopted.

September 20th.

Resolved, That the clerk be, and is hereby, directed to draw a warrant in favor of the Syracuse Water Works Company for
151 $5,272.76, with interest from July 1st, 1858, for the amount due said company from the city of Syracuse. Adopted.

1859, January 31st.

Water company submitted report, together with a balance-sheet.

1859, April 18th.

The following communication was received from the water company and referred to the committee on water works:

To the hon. mayor and common council:

At a meeting of the directors of the Syracuse City Water Works Company, held at their office on the 18th day of April, 1859—present, all the directors except Mr. Leavenworth—the following preamble and resolutions were adopted:

Whereas the proprietors of the Syracuse City Water Works Company have from time to time expended in the construction of the works for supplying the city of Syracuse with water sums of money now amounting in the aggregate to $179,145.09, upon which no sufficient dividends or income have or can be derived from said investment;

And whereas the directors of the company were induced by the earnest solicitation and request of the municipal authorities of the city to make the largest part of such expenditure in the laying down iron pipe, which have been so laid as far and to as great an extent as the said company were able and which now supply water for the extinguishment of fires, in so effective a manner as to reduce the rates of insurance, by which the property of the city is largely benefited;

152 And whereas in the outset of such expenditure the proprietors of the water works were assured by the said municipal authorities that in consideration of such expenditure the city would always assure the said company such a sum of annual compensation as would net the proprietors at least the sum of ten per cent. annually as a dividend or compensation for such investment;

And whereas after the most faithful attention to the economical management of the said works and after years of patient expectation of an increase of compensation the said proprietors find that they can derive no compensation in the shape of dividends, and having devoted their time and care without adequate payment therefor and under the full conviction that the said water works are of great value to the city and to the property which is protected by these works,

and that the proprietors of the said company ought justly to be remunerated for this expenditure, which thus far has been solely for the public benefit;

And whereas the directors of the said company have fully and fairly presented the whole matter to the common council of the city of Syracuse and there seemed to be no question that the proprietors of the said company ought to be fairly and justly compensated for the said supply of water, but as yet these just claims of the company have not been adjusted, and as the half year for which the said company have received payment from customers for the use of the water will expire on the first day of May next, when it is indispensable that some satisfactory arrangement should be made, it is therefore

153 Resolved, That this company cannot continue to supply water to the city of Syracuse after the first day of May next, unless the company shall be assured of the payment of such increased sum of money therefor as will enable them to derive a reasonable revenue on their investment, and which has been heretofore fully communicated to the city authorities.

Resolved, That in pursuance of the foregoing preamble and resolutions the supply of water will be discontinued on and after the tenth day of May next, unless the proper and reasonable compensation therefor is previously settled and agreed upon.

Resolved, That the secretary of the company is authorized to certify a copy of this proceeding to the mayor and common council of the city of Syracuse.

HAMILTON WHITE, *Secretary.*

1859, April 25.

Resolved, That the officers of the Syracuse Water Works Company be requested to furnish the committee on water works, at the earliest practicable period, a schedule of the entire outlay made by said company at the request or order of the common council, and for the purpose of supplying water to the city for fire purposes—the number of rods of iron pipe with the cost of laying the same—to the end that said committee may report upon the subject of compensation to the water works company understandingly.

Adopted.

1859, May 18th, Ald. Hoyt, from the committee on water works, made the following report:

To the honorable the mayor and common council:

Your committee on water works, to whom was referred the
154 somewhat extraordinary preamble and resolves of the Syracuse Water Works Company, adopted by the directors of said company on the 18th of April, 1859, have had the same and matters connected therewith, as far as practicable, under careful consideration.

The preamble, made up of five specific whereases of extraordinary

statements and assumptions, is copied herein by divisions numbered, as also the resolutions.

No. 1. "Whereas the proprietors of the Syracuse City Water Works Company have from time to time expended in the construction of the works for supplying the city of Syracuse with water sums of money now amounting in the aggregate to $179,145.09, upon which no sufficient dividends or income have or can be derived from said investment."

That the construction of the works has cost $179,145.09 is not a fact; though if it were it has nothing to do with the city or what the city shall pay. The simple and only question as between the two corporations is, "How much has been expended by the water company at the request or order of the city authorities? And what is a fair compensation therefor?" which we shall refer to hereafter. But it may be well to digress from the real case and show the actual total cost of the works, because that is the great lever (of talk, if not argument) with the city when trying to have a compensation fixed. It is not necessary to go back on the formation of the present company, but simply say that the law of 1849, under which they organized, required the new company to take Capt. Teall's old works at their ascertained cost—not their value—which, being found July 3, 1849, to be $30,999.24, forms the starting point of the
155 present company. The company are required to make detailed annual reports to the common council under oath, and by these (a schedule from which is hereto appended) the construction account appears at $149,242.68—a difference of $29,902.41 from the claim set up. But let us show that even this is too much. By taking the paid-in stock of each year and adding interest thereon and all expenses for construction, repairs, taxes, and contingents, then deducting the receipts for the year, gives the real cost from year to year. We have made a cast of this kind (annexed hereto) from the company's reports on file, and find the real total cost Jan. 1, 1859, to be $139,233.33—$39,921.71 below the claim.

No. 2. "And whereas the directors of the company were induced by the earnest solicitations and request of the municipal authorities of the city to make the largest part of such expenditure in laying down iron pipes, which have been so laid as far and to as great an extent as the company were able and which now supply water for the extinguishment of fires, in so effective a manner as to reduce the rates of insurance, by which the property of the city is largely benefited."

As to being induced by municipal authorities, the evidences are not very strong. The proposition to lay iron pipes for fire purposes came in 1851, it is understood, from the water company. The negotiation proceeded, and, as appears by record, the terms of the company were finally acceded to—not by a very flattering or earnest inducement or vote—six of the eight aldermen being present and Herrick, Hatch, and Pope voting aye, and Burton, Taylor, and
156 Higgins voting nay—decided affirmatively by the casting vote of Mayor Wheaton.

As to the largest part of such expenditure being made at the

request of the municipal authorities, surely the city did not request the water company to assume $30,999.24 of stock for old works and springs which were useless and abandoned for the reason that they furnished but a limited supply of poor quality of water and only a few feet head. As a matter of self-protection, the company procured new springs on the south, built a new reservoir, supply wells, and aqueducts leading thereto.

Up to January 1, 1851, the construction, as by reports, cost $49,228.55, at which time not a foot of iron pipe was laid or requested.

The first formal request for water was in April, 1851, and the first contract was perfected Sept. 10, 1851, and became effective July 1, 1852.

The procuring and bringing in of Arbor brook, in 1855, at a cost of not less than $10,000 (it cannot be used in case of fires, but has to be shut off); the laying iron pipe in Geddes street from Delaware to Fayette streets and in Fayette street from Geddes street to the center of block 284 to connect Arbor brook, at a cost of $5,594.60; the laying of iron pipe from Genesee to Market streets and in Washington street from Market to Beech streets, at a cost of $4,626.65, for which Central railroad pay in consideration of their second track through that street; the laying of iron pipe to E. Clark & Co.'s mill from Wolf street, at a cost of $732, and on which Clark & Co. pay ten per cent. annually on $1,650, certainly were none of
157 them at the request of the city, and even these items together foot $70,181.80.

Assuming that all the iron pipe, except as above enumerated, is at the request of the city, we have the following outlay for the city as a body corporate:

606.06 rods 12-inch pipe at $40 per rod	$24,242	40
565.58 " 8 " " at $22 " rod	8,042	76
773.31 " 6 " " at $20 " rod	15,466	20
1,219.75 rods 4-inch pipe at $11.50 per rod	14,027	13
Reservoir contracted in '53 for fire purposes	3,500	00
Total and the whole	$65,278	49

As to lessening the rate of insurance, while we concede the utility of the water company, our own experience is that insurance has increased in rate.

No. 3. "And whereas in the outset of such expenditure the proprietors of the water works were assured by the said municipal authorities that in consideration of such expenditure the city would always assure the said company such a sum of annual compensation as would nett the proprietors at least the sum of ten per cent. annually as a dividend or compensation for such investment."

What assurance in the representatives of one corporation to assume that another corporate body has turned ten per cent. insurance company? No such idea is indicated by the record. No man who has held office in the city government will admit the like.
158 On the contrary, those of the time when the water company

were first formally requested to furnish water to the city as prescribed in their charter emphatically deny any such assurance, either directly or by implication. If such be the fact by whom was it given, is the question. Point to the men.

No. 4. "And whereas, after the most faithful attention to the economical management of said works and after years of patient expectation of an increase of compensation, the said proprietors find that they can derive no compensation in the shape of dividends, and having devoted their time and care without adequate payment therefor, and under the full conviction that the said water works are of great value to the city and to the property which is protected by these works, and that the proprietors of the said company ought justly to be remunerated for this expenditure, which thus far has been solely for the public benefit."

By reference to the schedule of reports it will be seen that in 1850 a four per cent. dividend was paid. This was made before any special outlay at the request or on behalf of the city. The special outlay at the request of the city began in 1852, since which time an annual dividend of six per cent has been made—that is, in 1853, one of twelve per cent.; in 1854, one of seven per cent.; in 1856, one of seven per cent.; in 1857, one of ten per cent.

We cannot concede that the expenditure has been solely for the public benefit. It has been also a benefit to the stockholders, but perhaps not to the extent they may have fairly anticipated or desired, but how are the city, as a corporation, responsible for
159 this? The Syracuse Water Works Company, like our railroads, banks, and manufacturing companies, stands a corporate body, claiming the public good, but brought together by the hope of individual gain. It is a fair offset, generally, to set the public good against the special privileges granted by the public. This company have those special privileges—that of using our streets in which to conduct their business free of charge, often becoming a nuisance for a time in their operations of construction, leakage, and repair.

No. 5. "And whereas the directors of the said company have fully and fairly presented the whole matter to the common council of the city of Syracuse, and there seemed to be no question that the proprietors of the said company ought to be fairly and justly compensated for the said supply of water, but as yet these just claims of the company have not been adjusted, and as the half year for which the said company have received payment from customers for the use of water will expire on the first day of May next, when it is indispensable that some satisfactory arrangement should be made, it is therefore."

Up to 1856 there seems to have been no question as to price; but that year, though the company laid the pipe requested, they refused to enter into written contract, for two reasons—first, because such written contract would compel them to furnish a sufficient supply of water at all times, when a drouth might put it beyond their power of fulfillment; and, second, because they thought compensation should be seven instead of six per cent. On presentation of

their account, in October, 1857, the matter was formally
160 brought up and referred to the committee on water works.
That committee held a meeting at the mayor's office, at which were present John Wilkinson and Hamilton White, Esqs., president and secretary of the company. We are informed that at such conference the whole subject was canvassed—the condition of the company and its relations to the city; that Messrs. Wilkinson and White then said that seven per cent. upon the actual outlay, at the request and for the benefit of the city as a corporation, was all that in reason could be demanded and was all that was asked. They further claimed that if seven per cent. were then agreed to it would place the company in such condition as to in a very few years reduce the rate to five and perhaps three and a half per cent., which is indicated in the report of the committee on file. The committee agreed to the full demand of the water company, terminating existing six per cent. contracts and placing the whole at seven per cent. from the first of July, 1857. The next week Hon. E. W. Leavenworth, on behalf of the company, advocated the arrangement agreed upon before the common council, and it was adopted.

Near the close of the term of our immediate predecessors the question was again brought to the attention of the common council and a still further increase demanded. It was referred to the appropriate committee, who did not even report upon it, but left it to be settled by the council.

Resolutions.

Resolved, That this company cannot continue to supply water to the city of Syracuse after the first day of May next, unless the company shall be assured of the payment of such increased sum
161 of money therefor as will enable them to derive a reasonable revenue on their investment, and which has be enheretofore fully communicated to the city authorities.

Resolved, That in pursuance of the foregoing preamble and resolution the supply of water will be discontinued on and after the tenth day of May next unless the proper and reasonable compensation therefor is previously settled and agreed upon.

Resolved, That the secretary of the company is authorized to certify a copy of this proceeding to the mayor and common council of the city of Syracuse.

To talk of cutting off the flow of water unless the terms of the company are acceded to is folly. The sixteenth section of the water works company's charter forbids such an idea. That section plainly prescribes the course to be pursued in case of non-agreement as to compensation, and that course is to apply to the supreme court for the appointment of three commissioners, who are to fix the terms between the company and the city—such terms to stand for three years. Why do not the company take this the only legitimate course if there is justice in their claim? The reasons are obvious. The sixteenth section is as follows:

"Said company shall, when requested, furnish water to the common council of the city of Syracuse in extinguishing fires, and other

purposes, upon such terms as may be agreed upon between the said common council and the company; and in case they cannot agree either said common council or said company may apply to the supreme court, as provided in section ten of this act, for the appointment of three commissioners who shall prescribe the terms
162 upon which water shall be furnished, and said company shall furnish water upon the terms so prescribed for the period of three years, at the expiration of which time a new commission may be applied for by either the common council or the company, and thereafter once in three years a like application may be made."

The officers of the water company are earnest and diligent in their efforts to convince your committee that there is an obligation on the part of the city to pay them such a sum annually as, added to their other receipts, will equal ten per cent. on their entire investment, and claim that investment to be some $40,000 more than we make it. We cannot consent to this doctrine, because it would be making the city government an insurance company for the water company. It would be very likely to beget a laxity in the management, which the city would have to make good.

If there be justice in making the stock of the water company at par by payments from the city treasury on the ground that it is a public benefit in protecting us from fire, there would be like justice in relieving the depreciated stock of the railroads running into our city, who may claim to be public benefactors by their daily contribution of customers to our trade, and of the banks (who have plenty of money to loan when you don't want it, but when you want it most are hard up, as the water works were at the time of the great fire in the First ward in 1856), who may lay claim to being public benefactors because they furnish the "wheels" to roll trade along with.

Every tub upon its own bottom, is a trite saying. If the city
163 of Syracuse has anything, let her pay for it as other folks do—pay for what she has and no more.

If she has guaranteed anything to the water works company, find the guaranty and then fulfill. But she has not. She stands clear.

The water company demand $8,000. We say, pay fairly for the outlay made in the city's behalf at her request, and that seems to be $65,278.49 and no more. Recollect, most of this pipe on which the city pays is used also for supplying private customers.

Now, what is a fair compensation? The city of Syracuse can borrow money on long time, certainly for seven per cent., and probably for six per cent. Then seven per cent. seems liberal, and at this rate the amount to be paid the water works company would be $4,569.49, which your committee recommend be paid.

Your committee believe that it may safely be assumed that the water works company will receive from other sources than the city during the year at least ---------- $9,500 00
To which add the sum recommended by the committee to be paid for the city ---------- 4,569 49

And the company will receive ---------- $14,069 49

A sum amounting to more than ten per cent. on the whole capital invested, if such capital is correctly and truly set forth in the schedule at $139,223.38.

A sum amounting to over nine per cent. on the cost of the works, as appears from the company's own reports to the common council, which sum is $149,242.68.

A sum amounting to over seven and three-fourths per cent. on the whole cost, as now claimed by the water company, which is figured at $179,145.09.

164 The water works company were requested by resolution of the council to furnish a detailed statement of all iron pipe laid at the request of the city, in what streets and from what points in such streets, and the size, with the cost of the same. They furnish the gross amount of all iron pipe laid, by sizes, but not the points of commencement and termination. They also gave a cost price of twelve-inch at $40, eight-inch at $30, six-inch at $22, and four-inch at $14 per rod. The contracts enumerate the cost of eight-inch at $22, the six-inch at $20, 108 rods out of over 1,200 rods of four-inch at $14, and the balance at $11. We have taken in our estimates the prices indicated in the contracts, averaging the four-inch at $11.50.

We have caused a schedule of the streets in which iron pipe is laid, the size, and the commencement and termination of the same, as far as practicable, to be made, not only for present information, but for future reference, which accompanies this report.

Your committee regard a compilation of all the laws relating to the water works company in convenient shape, so that city officials may readily refer to and become familiar with them, as a matter of necessity, and therefore recommend that they, with this report and accompanying papers, be printed in pamphlet form.

All of which is respectfully submitted.

JASON S. HOYT,
DAVID FIELD,
SAMUEL P. GEER,
Committee.

May 18, 1859.

165 SCHEDULE A.

Showing the actual paid-in stock, the expense of construction, receipts, and dividends of the water works company, as appears by their annual reports on file in the city clerk's office.

Years.	Stock paid in.	Expended in construction.	Receipts.	Dividends.
Original	$30,999 24	$30,999 24		
1849		7,284 67	$1,014 54	
1850	4,538 34	10,944 64	3,176 72	$1,240 00
1851		6,768 75	4,583 82	
1852	15,496 99	28,343 98	6,033 28	
1853	7,166 24	24,248 27	10,458 66	6,660 00
1854	350 00	8,179 78	8,593 99	4,060 00
1855	121 10	16,225 50	13,148 13	
1856	19,097 50	14,984 37	11,675 76	6,586 50
1857	7,950 00	778 13	9,677 19	7,289 00
1858		485 35	15,395 65	
			*1,441 18	
	$85,720 41	$149,242 68	$80,667 47	$25,775 50

* Bills receivable.

SCHEDULE B.

Showing the actual cost of the water works.

1849, July 3. Present Syracuse Water Works Company organized, old works put in and new stock issued therefor at	$30,999 24
Interest on same to Jan. 1, 1850	1,066 99
Expended in construction, repairs, taxes, and contingents	7,284 67
	$39,350 90
Deduct receipts for six months of 1849	1,014 54
1850, Jan. 1. Total outlay, over and above receipts, to date	$38,336 36
166 Interest on same to Jan. 1, 1851	2,683 55
Expended in construction, repairs, contingents, and taxes	10,944 64
	$51,964 55
Deduct receipts for 1850	3,176 72
1851, Jan. 1. Total outlay, over and above receipts, to date	$48,787 83
Interest on same to Jan. 1, 1852	3,415 15
Expended in construction, repairs, taxes, and contingents	7,181 59
	$59,384 57

Deduct receipts for 1851	$4,583 82
1852, Jan. 1. Total outlay, over and above receipts, to date	$54,800 75
Interest on same to Jan. 1, 1853	3,836 05
Expended in construction, repairs, taxes, and contingents	28,938 52
	$87,575 32
Deduct receipts for 1852	6,033 28
1853, Jan. 1. Total outlay, over and above receipts, to date	$81,542 04
Interest on same to Jan. 1, 1854	5,707 94
Expended in construction, repairs, taxes, and contingents	24,845 27
	$112,095 25
Deduct receipts for 1853	10,458 66
1854, Jan. 1. Total outlay, over and above receipts, to date	$101,636 59
Interest on same to Jan. 1, 1855	7,114 26
167 Expended in construction, repairs, taxes, and contingents	10,344 96
	$119,095 81
Deducts receipts for 1854	8,593 99
1855, Jan. 1. Total outlay, over and above receipts, to date	$110,501 82
Interest on same to Jan. 1, 1856	7,735 13
Expended in construction, repairs, taxes, and contingents	17,986 91
	$136,223 86
Deduct receipts for 1855	13,148 13
1856, Jan. 1. Total outlay, over and above receipts, to date	$123,075 73
Interest on same to Jan. 1, 1857	8,615 30
Expended in construction, repairs, taxes, and contingents	17,186 40
	$148,877 43
Deduct receipts for 1856	11,675 76
1857, Jan. 1. Total outlay, over and above receipts, to date	$137,201 67
Interest on same to Jan. 1, 1858	9,604 12

Expended in construction, repairs, taxes, and contingents		$4,207 47
		$151,013 26
Deduct receipts for 1857		9,677 19
1858, Jan. 1. Total outlay, over and above receipts, to date		$141,336 07
168 Interest on same to Jan. 1, 1859		9,893 52
Expended in construction, repairs, taxes, and contingents		4,830 62
		$156,060 21
Deduct receipts for 1858		16,836 83
1859. Actual cost of works, Jan. 1		$139,223 38

SCHEDULE C.

Showing the length and size of iron water pipe laid, in what streets, and starting and terminating points.

12-inch pipe.

From the reservoir to Onondaga street.
Through Onondaga street to Salina street.
Through Salina street from Onondaga to Church street (606.06 rods) ..... 10,000 feet.

8-inch pipe.

In Salina street from Church to north of Union place	5,025
Genesee street from Salina to Montgomery street	927
West street from Fayette to Water street	80
(365.58 rods)	6,032

6-inch pipe.

In Wolf street from Carbon to Salina street	985
Salina street from north of Union place to Wolf street	2,710
Church street from an angle in block 76 to Oswego canal	1,440
Willow street from west side Oswego canal across Lock street	575
169 Lock street from Willow to James street	355
Franklin and Mechanic streets from Church street to gas works	795
James street from McBride to Lodi street	1,320
Genesee street from west end Fayette park to Prall's corner	725
Warren street from Washington to Genesee street	185

Fayette street from Salina street to the center of block 284	3,492
Not shown on map	181
(773.33 rods)	12,763

4-inch pipe.

In Wolf street from Salina to Lodi street	452
Court street from Salina to Park street	440
Ash street from Salina to Townsend street	435
James street from hydrant between Pearl street and Oswego canal to McBride street	1,630
In James street from Salina to Warren street	385
Catharine street from James to Green street	670
Green street from Catharine to Lodi street	1,110
Water street from Salina street to Pope & Co.'s furnace	1,415
Fayette street from Salina street to Nelson block	1,134
Fayette street from west end Fayette park to 62 feet east of Almond street	1,437
Genesee street from west end of Fayette park to Almond street	1,240
Genesee street from Clinton to West street	1,575
Jefferson street from Salina to Lemon street	3,200
170 Montgomery street from Jefferson to Onondaga street	150
Montgomery street from Washington street to city hall	239
Onondaga street from Salina street to north end of block 121	1,070
Harrison street from Salina to Mulberry St.	1,700
In Clinton street from Water street to hose-house	196
W. Washington street from Salina to Franklin street	1,650
(1,219.75 rods)	20,128

Iron pipe not ordered or requested by the city—8-inch.

In Geddes street from Delaware street to Fayette street	2,497
In Fayette street from Geddes street to center of block 284	1,699

To connect Arbor brook.

From Genesee-street pipe to beginning of pipe on E. Washington street	130

4-inch.

In E. Washington street from Market street to Beach street. For which the railroad pay.	6,400
From Wolf street to E. Clark & Co.'s mill (for which they pay)	553

The report was recommitted to the committee and Ald. Collins added to such committee.

May 9, 1864.

Resolved, That the water works company be, and they are
171 hereby, required to extend their water pipes by laying a four-inch water pipe from Fayette street through Warren street to Adams street. Adopted.

May 16, 1864.

Resolved, That the water works company be, and they are hereby, required to extend their water pipes by laying a four-inch water pipe from Salina street through Butternut street to McBride street and through McBride street to Division street. Adopted.

Pages 57, 58. May 16, 1864.

Whereas the Syracuse City Water Works Company are making arrangements to supply the city with water from the head-waters of Furnace brook, in the town of Onondaga, and to construct suitable reservoirs for storing and distributing the same; and whereas the city is largely interested in the character of the water furnished by said company and the approval of the same is made necessary by the charter of said company: Therefore

Resolved, That said water be, and the same is hereby, approved of by the board for the purposes aforesaid. Adopted.

Page 84. June 17, 1864.

Resolved, That the water works company be, and they are hereby, required to extend their pipes by laying a four-inch pipe in West street from Onondaga to Genesee streets; also through Gifford street from West to Geddes streets. On motion of Alderman Glen, laid over one week.

Page 88. July 11, 1864.

Resolved, That the water works company be, and they are
172 hereby, required to extend their pipes by laying a four-inch water pipe through Catharine street from Green street to Burnet street and through Howard street from Green street to Hawley street. Adopted.

Page 90. July 11, 1864.

Resolved, That the water works company be, and they are hereby, required to extend their pipes by laying a four-inch water pipe in West street from Onondaga to Genesee street; also through Gifford street from West to Geddes street. Adopted.

Page 94. July 18.

Communication from E. W. Leavenworth, president of the water works company, asking that the resolution passed at the last meeting for the laying of water pipes in West street be amended so as to read six-inch pipe from Onondaga to Fayette street. To the committee of the whole.

Page 94: Resolved, That the Syracuse Water Works Company

be, and are hereby, authorized to lay six-inch pipe in place of four-inch pipe ordered in West street from Onondaga street to Fayette street. Adopted.

Page 130. October 17, 1864.

Resolved, That the water works company be, and they are hereby, required to extend their pipes by laying a four-inch water pipe through Pearl street from James street to Salina street, and also from Wallace street east to Noxon street, to Franklin street, thence through Franklin street to Olive street, thence east through Olive street to Fulton street. Adopted.

Page 145. October 31, 1864.

173 Resolved, That the water works company be, and they are hereby, required to extend their pipes by laying a four-inch water pipe in West Water street from West street to the bridge crossing Onondaga creek. Adopted.

Page 43: Resolution, May 22d, 1865, by Alderman Mackin. Resolved, That the Syracuse Water Works Company be, and they are hereby, required to extend their pipes by laying a four-inch pipe through Wolf street from Carbon street to Second North street and through Lock street from Salina street to Isabella street. Adopted.

Page 62: Resolved, June 26th, 1865, That the Syracuse City Water Works Company be, and they are hereby, required to extend their pipes by laying a four-inch water pipe through Madison street from Warren street to Montgomery street. Adopted.

Page 68: Resolved, July 3d, 1865, That the Syracuse Water Works Company be, and they are hereby, required to extend their pipes by laying a four-inch water pipe through Burnet street from the intersection with James street east to Catherine street. Adopted.

Page 71: Communication, July, 1865, from C. P. Clark, superintendent of the Syracuse Water Works Company, inviting the common council to visit the new reservoir on Friday next. On motion of Alderman Crouse, the invitation was accepted.

Page 76: Resolved, That the Syracuse City Water Works Company be, and they are hereby, required to extend their pipes by laying a four-inch water pipe through Burnet street from Catharine to Howard street and thence through Howard street to Gertrude street. Adopted July 17th, 1865.

174 Page 85: Communication, August 14th, 1865, from C. P. Clark, superintendent Syracuse Water Works Company, inviting the mayor and common council to visit the new reservoir on Tuesday, August 15th, at 3 o'clock p. m. On motion of Alderman Bonner, the same was accepted.

Page 112: Resolved, That the Syracuse City Water Works Company be, and they are hereby, required to extend their water pipes through Clinton street from Washington street to Onondaga street. Adopted September 11th, 1865.

Page 118: Resolved, That the water works company be, and they are hereby, required to extend their pipes by laying a four-inch

water pipe through Seymour street from Onondaga to Oswego street. Adopted September 18th, 1865.

Page 19; Resolved, March 19th, 1866, That the water company be, and are hereby, required to lay a six-inch water pipe from the hydrant at engine-house No. 4 through Division street to Townsend street to the intersection of Lodi, Pond, and Isabella streets; also a four-inch water pipe ordered for Warren street through Adams to Montgomery street. Adopted.

Page 42: Resolved, That the water works company be, and are hereby, directed to lay a six-inch water pipe through Seymour street from Onondaga to Oswego street in place of the four-inch water pipe ordered for same street September 18th, 1865. Adopted April 23d, 1866.

Page 59: Resolved, May 28th, 1866, That the water works company be, and are hereby, required to extend their water pipes by laying a ten-inch pipe from the termination of the present
175 pipe at the corner of Geddes and Shonnard streets southerly to the south bounds of the city to connect with the ten-inch pipe to be laid by said company from their distributing reservoirs to said point, said extension of pipe to be laid under the direction of the committee on water. Adopted.

Page 68: Resolved, June 18th, 1866, that the mayor and common council of the city of Syracuse, in pursuance of the provisions of the 8th section of chapter No. 224 of the laws of 1849, do hereby approve of the following streams of water, viz:

The Furnace brook, the Kenyon brook, the Loomis brook, and the Poor House brook, all on Onondaga West Hill, to be taken and used by the Syracuse Water Works Company for the supply of said city with water, under said act of the Legislature and the acts amending the same. Adopted June 18th, 1866.

Page 76: Resolved, That the water works company be, and are hereby, ordered to extend their water pipes as follows, to wit, by laying a four-inch pipe through Bank alley from the R. R. depot to Fayette street, a four-inch through Grape street from Jefferson to Harrison street, and a four-inch pipe through Irving street from Washington street to Genesee street. Adopted July 2d, 1866.

Page 84: Resolved, That the water works company be, and are hereby, ordered to extend their water pipes by laying a four-inch pipe in Bear street from Carbon to Second North street. Adopted July 16th, 1866.

Page 89: Resolved, That the water works company be, and are hereby, required to lay an eight-inch pipe in Onondaga street
176 from Salina to Mulberry street, and a four-inch pipe in Wallace street from the present terminus in said street to West Genesee street. Adopted July 30, 1866.

Miscellaneous. Page 72.

Hon. E. W. Leavenworth addressed the council, giving his views and making suggestions in relation to the extension of the pipes of the water works company for the protection of the property of the

city from fire and the convenience of the citizens, as well as the interest of the city, and recommending the laying of pipes of a larger size in the principal streets during the continuance of the contract with the company, so that at its expiration the city will be amply supplied with water in each and every part, and stating about what proportion, if ordered, could be laid during the present season. June 17th, 1867.

Page 82: Resolved, That the water works company be, and they are hereby, required to extend their water pipes as follows, to wit, by laying a four-inch pipe in Court street from Salina street to Lodi street; a six-inch pipe in Pond street from Townsend street to Park street; a four-inch pipe in Laurel street from Fulton to Marsh street and through Marsh street to Division street; a six-inch pipe in Niagara street from Fayette street to Otisco street; a six-inch pipe in Tioga street from Fayette street to Otisco street; an eight-inch pipe in Lock street from James street to the bridge crossing the Erie canal; an eight-inch pipe in South Salina street from Onondaga street to Burt street; an eight-inch pipe in East Genesee street from Mulberry street to Irving street; an eight-inch pipe in Mulberry street from the Erie canal to Harrison street, and a six-inch
177 pipe from said Harrison street to Burt street; a four-inch pipe in Montgomery street from Onondaga street to Adams street. Adopted July 8th, 1867.

Page 95: Resolved, That the water works company be, and are hereby, required to extend their water pipes by laying a six-inch pipe in James street from Lodi street to Highland street. Adopted July 29th, 1867.

Page 149: Petition of E. W. Leavenworth on behalf of the Syracuse City Water Works Company, asking the common council, a committee of its members, to confer with the water company in regard to the manner in which the city may be supplied with a more abundant supply of water. To the committee on water, December 9th, 1867.

Page 155: On petition of E. W. Leavenworth in behalf of the water company, at the last meeting of the council, moved by Ald. Glen that the mayor appoint a special committee of three to confer with the water company, as asked for in the petition. Carried. The committee: Alds. Jones, Glen, and Bruyn. Dec. 23d, 1867.

Page 82: Resolved, That the water company be, and they are hereby, required to extend their water pipes by laying a six-inch pipe in James street from Highland street to Park street. Adopted June 22, 1868.

Page 95: Resolved, That the water works company be, and they are hereby, required to extend their water pipes by laying a four-inch pipe from the present terminus in Montgomery street south to Jefferson street, and a four-inch pipe in Montgomery street
178 from Genesee street to Fayette street. Adopted July 13, 1868.

Page 103: Resolved, That the water works company be, and they are hereby, required to extend their water pipes in West Genesee street by laying a four-inch pipe in said street from Plum street to Leavenworth avenue. Adopted July 27th, 1868.

Page 105: Resolved, That the Syracuse City Water Works Company be, and they are hereby, requested to report to this council at its next meeting why the said company have not laid the water pipe ordered to — laid by the last common council, and to report if they intend to lay such water pipes as may be ordered by this council during the present season. Adopted July 27, 1868.

Page 108: The following communication was received from the water works company:

To the honorable the mayor and common council of the city of Syracuse:

Agreeably to the request contained in a resolution passed at the last meeting of your honorable body, the Syracuse City Water Works Company begs leave to report that when the contract between the city and the water works company was entered into it was not expected that the city would order pipe so fast as to require the entire receipts of the company beyond its necessary expenses to supply the same; still less was it expected the company, after using all its surplus receipts, would be asked to borrow money also and expend the same in laying new pipe. In pursuance of the said agreement made in the year 1863 the said company have gone on from year to
179 year and have laid all the pipe ordered by your honorable body except a small part of that ordered last year and perhaps one or two pieces ordered this year, viz., that on James street we are now at work upon, and we hope yet to lay one or two pieces more, but we shall probably be unable to lay all the pipe ordered this year.

We have each year expended the entire amount of our surplus receipts in laying pipes and we propose to do the same this year and also next year.

The stockholders of the company have not received a dollar in cash upon their stock since we began to lay pipe under said contract. We hope and expect during this and next year to lay all the pipe now ordered by your honorable body and still more if ordered, and the receipts of the company will enable us to do it.

All of which is very respectfully submitted in behalf of the company.

E. W. LEAVENWORTH.

August 3, 1868. Page 114.

Resolved, That the city water works company be, and they are hereby, required to extend their water pipes by laying a four-inch pipe from Clinton street through Jefferson street to the front of the skating rink. Adopted August 10, 1868.

Page 206: Resolved, That the water works company be, and they are hereby, required to extend their water main in Mulberry street by laying an eight-inch pipe from Harrison street to Burt street, in place — the six-inch pipe heretofore ordered. Adopted February 8th, 1869.

180 Page 119: Resolved, That the water works company be, and they are hereby, required to extend their water pipes by

laying the following-named pieces of pipe, to wit: A six-inch pipe in North Salina street from Wolf street to Exchange street, a four-inch pipe in Exchange street from Salina street to Park street, a six-inch pipe in Court street from the present terminus to First North street, a four-inch pipe in Court street from Lodi street to Basin street, a six-inch pipe in Division street from Townsend to Lodi street, a six-inch pipe in Lodi street from Division to Butternut street, a six-inch pipe in West Genesee street from the present terminus to Geddes street, a four-inch pipe in Noxon street from the present terminus to Salina street, a six-inch pipe in Townsend street from James to Butternut street, a six-inch pipe in Catherine street from James to Willow street, a four-inch pipe in Willow street from Catherine to Lodi street, a six-inch pipe in Otisco street from Niagara to Seneca street, a six-inch pipe in Rust street from Onondaga to Johnson street, a six-inch pipe in Mulberry street from Burt street to the south line of the city, a four-inch pipe in Grape street from Harrison to Burt street, an eight-inch pipe in Genesee street from Irving to Beach street, and a four-inch pipe in East Fayette from Almond to Chestnut street. Adopted August 9th, 1860.

Page 199: The following draft of a law in relation to the Syracuse City Water Works Company, allowing the city to take stock in said company and contract for a more abundant supply of water, was presented and, on motion, referred to a special com-
181 mittee of three, consisting of Aldermen Glen, Higgins, and Levi.

An act to amend the "act entitled An act to incorporate the Syracuse City Water Works Company," passed April 5th, 1849.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The common council of the city of Syracuse are hereby authorized and empowered to take stock in the Syracuse City Water Works Company and at such times and for such amounts as they in their discretion may think proper.

Continued to page 55.

Pages 190 and 200: § 2. The said common council are also fully authorized and empowered to issue the bonds of said city in amounts not exceeding the par value of the stock taken from time to time, such bonds to be for such sums and payable at such times and places and on such interest not exceeding seven per cent. as the said common council may determine.

§ 3. The said common council are empowered to elect as many persons as may be agreed upon by and between them and the directors of the said water company, who shall be directors in the same, with like power in all respects as the other directors in said company.

§ 4. After the first year the directors so elected shall continue in office for one year and their term shall commence and end at the

same time with the other directors of said company, and in case of any vacancy the said common council shall elect some person to fill the same for the remainder of the year.

182 Page 200: § 5. The common council are hereby further authorized and empowered to add each year to the city tax-roll and collect in the same manner that other city taxes are collected all such sums of money as the city shall become obliged to pay by any action of the said common council under or by virtue of this act or by virtue of any agreement which they may make with the said water company under existing laws for the supplying of said city with water.

Page 11: Resolved, The common council do hereby approve of the bill prepared and presented to the common council January 24th, 1870, entitled An act to amend the act entitled An act to incorporate the Syracuse City Water Works Company, passed April 5th, 1849, and we do hereby request the representatives of this county in the Legislature of the State to procure the passage of said law by the Legislature. Adopted February 28th, 1870.

Pages 17 and 18: By Alderman Phillipson, March 7th, 1870—

Resolved, That the resolution passed by the common council February 28th, 1870, which read as follows:

"Resolved, That this common council do hereby approve of the bill prepared and presented to the common council January 24th, 1870, entitled An act to amend the act entitled 'An act' to incorporate the Syracuse City Water Works Company, passed April 5th, 1849, and we do hereby request the representatives of this county in the Legislature of the State to procure the passage of said law by the Legislature," be, and the same is hereby, rescinded. Adopted March 7th, 1870.

183 *Resolutions. Page* 22.

Whereas the present contract by and between the city of Syracuse and the Syracuse City Water Works Company for supply of water for city purposes expires in August next; and

Whereas it becomes necessary to take some further action at once as regards a future supply: Therefore

Resolved, That the mayor appoint a committee of three (3) from this council, himself to act in addition thereto as chairman; also that he appoint eight (8) citizens, one (1) from each ward of the city, to act in conjunction with said committee of councilmen, to meet and confer with a like committee appointed by the Syracuse Water Works Company; said committee of citizens appointed by the said water works company to meet in all respects the approbation of the mayor, and not to be interested, directly or indirectly, in the workings of the said water company.

Communications. Page 25.

To the common council of the city of Syracuse:

GENTLEMEN: 1st. The Syracuse City Water Works Company will

furnish the city with water from our present works for the yearly sum of $25,000, paid semi-annually.

2d. If the city take $50,000 in stock we will put up pump works, run them when necessary, not exceeding 150 days in the year, for $32,500.

3d. We will put up our own pump works, run them as above for $35,000, in each case to be paid semi-annually.

184 4th. We will sell our works at their cost at par value of the stock and take bonds of the city.

E. W. LEAVENWORTH, *President.*

Dated Syracuse, March 21st, 1870.

Referred to committee of the whole.

Page 50: Communication from the president of the Syracuse Water Works Company:

To the honorable the mayor and the common council of the city of Syracuse:

The undersigned, in behalf of the Syracuse City Water Works Company, begs leave to present that we are drawing towards the close of the second year in which we have furnished the city with water without any contract to regulate the price of the same; that it cannot but be desirable to both parties that this condition of things should be brought to an early close.

We therefore respectfully propose to your honorable body—

First. That we will meet the common council to discuss the subject and come to a satisfactory conclusion ourselves if possible.

Second. We shall agree to a board of three (3) commissioners, to whom the subject shall be referred, as the law provides.

Third. We will apply to the court, or your honorable body may do the same, for the appointment of such commissioners as the council may think proper.

Fourth. We will adopt any other course which the common council may suggest which promises to bring to a close the present

185 anomalous condition of things in the premises at an early day. All of which is respectfully submitted.

Syracuse, April 23, 1872.

E. W. LEAVENWORTH,
Pres. of said Company.

Page 214: Resolved, That the Syracuse Water Works Company be, and they are hereby, authorized and directed to lay the necessary four-inch pipe and connections for the erection of a hydrant for fire purposes at the southeast corner of Adams and Grape streets; also the southwest corner of Almond and Madison streets; and the city will pay the said water company seven per cent. on the cost of said pipe.

Adopted October 3, 1870.

By Ald. Morse:

Whereas it is an obvious fact that our city is insufficiently sup-

plied with water for both public and private uses, and that, even with its present population, there is urgent need of an increased supply; and

Whereas the growth of our city will from year to year make the deficiency more apparent and more damaging and injurious to the lives and property of our citizens; and

Whereas various schemes have from time to time been proposed for remedying this growing evil, all of which contemplates the conveyance of pure water from distant points and involves an expense which the present and prospective financial condition of our city will not warrant; and

Whereas experience has demonstrated in many cities that city water works, in addition to an immense outlay for their original construction, are, under this somewhat loose practice of mu-
186 nicipal management, maintained at a cost far exceeding that of similar works conducted by private enterprise; and

Whereas the Syracuse Water Company, by proposed additions to present facilities, can indefinitely increase the quantity, and have signified their willingness to double the present supply in a specified time for a reasonable compensation; and

Whereas the water will be the same as is now furnished, and which experience and competent chemical judges have proved to be good and wholesome: Therefore

Resolved, That his honor the mayor is requested to invite the Syracuse Water Works Company to submit to this council such information, plans, and proposals for an increased supply of water to the amount of at least seven millions of gallons per day, or double the present supply, with sufficient pressure for fire purposes, and to supply buildings in all parts of the city, with the additional cost of the same for a term of ten years per annum, the condition to be no water, no pay; the same to be submitted at an early date, so that, if acceptable to our citizens, application may be made to the Legislature during the next session for the necessary legislation.

Adopted Nov. 13, 1876.

Communications. *Page* 278.

From Edward H. Brown, secretary of the water company.

To the hon. mayor and common council of the city of Syracuse.

GENTLEMEN: The preamble and resolution of your honorable body, with the letter of the mayor, have been laid before our board of directors.

187 Thoroughly impressed with the wisdom of the several sections of the preamble without going into them at all in detail, we will say that, acknowledging the great and silent fact of the necessity of more water and an increased supply, we will state the result of many years of observation as to the amount of our disposal. During the great drought of 1875 we had the flows of the Onondaga creek carefully measured and found that at a reputed lower stage of water than had ever been known before that there were 37 millions

of gallons flowing in each twenty-four hours. With this before us, we again measured the creek on the first and second, also on the seventh, days of November in this year. The first measurement was by James G. Tracy, civil engineer; gave 45,578,751 gallons in twenty-four hours. The second measurement, by Rhesa Griffin, Jr., gave 37,479,056 gallons as the flow. Mr. Tracy's measurement was taken above our pump-houses and Mr. Griffin's below, which will account for the difference in the result. The result of these observations shows us that from 15 to 18 millions gallons of water daily can be taken from the creek for city purposes.

The present demand and consumption of the city is in all probability not far from three and one-half to four millions of gallons of water. With an abundant supply this will increase from year to year until it may be measured at about 100 gallons for each individual.

The resolution of the council calls for information relative to an increase to an amount of at least seven millions gallons daily. In this connection we may state, as our experience, the city, generally speaking, has not asked for enough water.

188 If the council will look to works capable of supplying ten millions gallons daily we believe it would be better policy and would satisfy the demands of the city for many years to come or until we have a population in the neighborhood of 100,000.

We are entirely confident that we have a sufficiency of water at hand, and that we can readily and in a very few months apply the power necessary to put it in our reservoir. After the water has been raised and is ready for distribution the question of manner of delivery of city mains and keeping of competent head at all hydrants in the city becomes one of the greatest importance.

In very many cities in this country during a few years past the size of street mains and of conduits for water have been greatly enlarged. Whether we should come into the heart of the city with a single great main connecting it with all now laid and extend smaller mains to the outskirts is now a question in hydraulics that the limited time at our disposal will not permit us to decide upon.

If we understand aright the powers of the present council are limited in relation to any increased compensation by the terms of the city charter, and that an act of the Legislatnre will be required to be passed conferring upon the council the right to make an arrangement with our company for any additional compensation. We are not only willing but desirous of adding to our capacity such works as will well and thoroughly supply the city and will enter upon the requisite contracts for making these additions early

189 in the coming year, provided the necessary Legislation (under such stipulations as may be agreed upon) can be secured.

In this connection I wish to call your attention to the fact that pipe can now be purchased for as low a price as we have known it in many years, and it is a matter of mutual interest that any agreement that is to be made should be entered into at an early day.

In a late communication from Allen Campbell, in charge of public works in New York, the statement is there made that the total

cost of the water supply in New York — $31,000,000, and the yearly charge of interest upon these works is something over $2,000,000 a year. If we consider that New York has a population of over 1,000,000, then there is a yearly charge of $2.00 per head.

If Syracuse, with 50,000 people, had to pay for water as New York ($2.00 per head) the cost of water here would be $100,000 per year. With the means at your disposal this would be excessive. The additional cost of works to supply the town with from four to ten millions daily will not be less than $150,000 to be made the first year, and during a period to take the full supply would be largely increased. This last amount can hardly be estimated, as it would be governed entirely by the length and size of the mains laid.

Your honorable body knows that any company contemplating the permanent investment of the sum of money we mention should examine the matter carefully and proceed with caution. This we mention that you may understand that while we wish to at once come to an understanding so that we may make such an ar-
190 rangement as is satisfactory, yet our time is so limited and the subject so large that we cannot give you exact figures; still we can and do express our willingness to go on as rapidly as arrangements can be consummated. We shall be happy at any time you may name to meet a committee from your honorable body to confer upon the subject, and will only add if desired we can be ready to raise 10,000,000 gallons daily by August 1st, 1877, or at an early day thereafter.

Very respectfully, &c.,

EDWARD H. BROWN, *Secretary.*

Page 166. Dec. 26th, 1864.

Petition of E. W. Leavenworth, president of the Syracuse City Water Works Company, asking that the common council give their assent to the repeal of the 27th section of their charter. To the committee on water.

Page 126. By Ald. Morse. May 28, 1877.

Whereas, while the city of Syracuse pays the liberal sum of $25,000 per annum for water, the fire department, the board of health, and our tax-paying citizens generally complain of an insufficient supply in many parts of the city; and

Whereas the Syracuse Water Company claims they are preparing to comply with the demands of the city for an increased supply of water by putting in a large and powerful engine, capable of pumping ten million gallons per day, but, their pipes to the center of the city being too small, they admit that without a larger conductor the evil complained of will not be remedied: Therefore

Resolved, That the Syracuse Water Works Company be,
191 and they are hereby, requested to put in large main pipes of cast iron (of at least 24 inches in diameter) as follows: From their present pumping works in and through Cortland avenue and Montgomery street to Water street and such other streets as may be

necessary; and permission is hereby granted to said company to dig up and make the necessary excavations through said streets on condition that they fill up and puddle with earth and leave the streets in as good condition as before such excavation as far as the same may be practicable.

On motion of Ald. Higgins, laid on the table for one week. May 28, 1877.

Ald. Morse, June 4th, 1877, called the above resolution from the table; which was adopted—ayes, 7, that being all the aldermen present at that meeting.

Communications.

From E. H. Brown, secretary of Syracuse Water Works Company, inviting the mayor and council to visit the pump works and reservoirs. On motion, the invitation was accepted, and Thursday, Sept. 13th, 1877, was named as the day. September 10th, 1877.

Feb. 28, 1878. Page 6.

From the Mayor's Address.

In a city like this an abundance of pure water is a necessity. During the last year a decided advance has been made in this direction, and there is good reason to believe that the supply will be soon ample for all needful purposes. The water company should go on increasing the capacity of their mains and perfecting a system of reservoirs which will not only be available for fire purposes in all parts of the city, but enable them at all times to distribute an abundance of pure and wholesome water.

192 The burden of this increased expense should not be laid upon the city, but, if practicable, a plan should be devised which will secure to the company a fair return for their investment and require a just contribution from all those who use this common necessity. Where water mains are laid around extensive and valuable blocks, supplying the property with constant protection against fire, there should be some method of compelling the use of water in and about such property, which cleanliness and the removal of nuisances require, and there should be ordinances or legislation as will protect the company from imposition and prevent the unauthorized use of water by malicious persons. I would particularly call your attention to the necessity for larger mains on account of fire purposes in the southerly part of the Seventh ward and the easterly portions of the Second and Fourth wards and in certain parts of the First ward.

From the above address I find under the head of expenses the following item:

"For water, as fixed by law, $25,000."

January 24, 1870. Page 199.

The following draft of a law in relation to the Syracuse City Water Works Company, allowing the city to take stock in said company

and contract for a more abundant supply of water, was presented, and, on motion, referred to a special committee of three, consisting of Ald. Glen, Higgins, Levi:

An act to amend the act entitled "An act to incorporate the Syracuse City Water Works Company," passed April 5, 1849.

The people of the State of New York, represented in senate and assembly, do enact as follows:

193 SEC. 1. The common council of the city of Syracuse are hereby fully authorized and empowered to take stock in the Syracuse City Water Works Company, and at such terms and for such amounts as they in their discretion may think proper.

SEC. 2. The said common council are also fully authorized and empowered to issue the bonds of said city, in amounts not exceeding the par value of the stock so taken from time to time, such bonds to be for such sums and payable at such times and places and on such interest, not exceeding seven per cent., as the said common council may determine.

SEC. 3. The said common council are hereby empowered to elect so many persons as may be agreed upon by and between them and the directors of the said water company, who shall be directors in the same, with like power in all respects as the other directors of said company.

SEC. 4. After the first year the directors so selected shall continue in office for one year, and their terms shall commence and end at the same time with the other directors of said company, and in case of a vacancy the said common council shall elect some person to fill the same for the remainder of the year.

§ 5. The common council are hereby further authorized and empowered to add each year to the city tax-roll, and to collect it in the same manner that other city taxes are collected, all such sums of money as the city shall become obligated to pay by any action of the said common council under or by virtue of this act, or by virtue of any agreement which they may make with the said water company under existing laws for the supplying of said city with water.

194 March 14, 1870. Page 22.

Whereas the present contract by and between the city of Syracuse and the Syracuse City Water Works Company for supplying of water for city purposes expires in August next; and

Whereas it becomes necessary to take some further action at once as regards a future supply: Therefore

Resolved, That the mayor appoint a committee of three (3) from this council, himself to act in addition thereto as chairman; also that he appoint eight (8) citizens, one from each ward of the city, to act in conjunction with said committee of councilmen, to meet and confer with a like committee appointed by the Syracuse City Water Works Company, said committee of citizens appointed by the said water works company to meet in all respects the approbation of the mayor and not to be interested, directly or indirectly, in the workings of the said water company.

Resolved, That it shall be the duty of the committee so appointed by the mayor and the said water works company to study the interests of all parties interested in the question of a water supply and to use their best endeavors to arrive at the basis of an arrangement for a future and ample supply of water in this city, amicably and just as between the city at large and said water company.

Resolved, That said committee as appointed as aforesaid may be called together from time to time in the discretion of the mayor.

Resolved further, That the action of this committee, through the committee of councilmen, shall be reported to this council for
195 approval, and that no action decided upon by said committee shall be binding upon either of the contending parties until approved by both. Adopted.

Whereupon the mayor appointed the committee on water as the committee of three asked for in the resolution, reserving the appointment of the committee of citizens until the next meeting of the council, thereby making the committee of the common council, to wit, Mayor Clark, chairman, and Ald. Phillipson, Kingsley, Levi.

Oct. 2, 1876.

Resolved, That the Syracuse Water Works Company be, and they are hereby, authorized and directed to lay the necessary four-inch pipe and connections for the erection of a hydrant for fire purposes at the southeast corner of Adams and Grape streets; also on the southwest corner of Almond and Madison streets, and the city will pay said water company seven per cent. interest on the cost of said pipe. Adopted.

EXHIBIT 15.

Articles of agreement made and entered into this thirteenth day of March, 1863, between the city, mayor, and common council of the city of Syracuse, of the first part, and the Syracuse City Water Works Company, of the second part, witnesseth:

That whereas the said company are constructing a new reservoir near Onondaga hill, in the town of Onondaga, for the purpose of increasing the facilities of said company for the supply of water; and

196 Whereas the said city requires a more abundant supply of water for fire purposes and other public uses than can be furnished by said company with the present works:

Now, therefore, the said parties, in consideration of the mutual covenants and agreements between them herein contained, do covenant and agree as follows:

The party of the second part covenants and agrees to complete the reservoir now being constructed, as aforesaid, as soon as practicable and to construct a second reservoir of sufficient capacity to supply the party of the first part with water, at an elevation sufficient to furnish water to the city for the purposes stated in this agreement, at a head of about one hundred and fifty feet, but not less than one hundred and forty feet, except with the consent of the

city, above the level of the canal at the Syracuse House, in said city, and to connect the reservoir now being constructed with said second reservoir by proper and sufficient conduits or pipes, and also to connect the mains and pipes now laid in said city for the conveyance of water with the said second reservoir by cast-iron pipes of sufficient capacity and so as to supply them at all times with sufficient water for the purposes contemplated by this agreement.

The said party of the second part further covenants and agrees to furnish at all times to said city during the period of five years from the time when the said new reservoirs and connection are completed, at the head aforesaid, a full and constant supply of pure and wholesome water for the use of the city for fire purposes and to supply the hydrants now erected and those which may be
197 erected during the continuance of this agreement and for the use of school-houses, public cisterns, and markets of the party of the first part, and for such other public uses for which water may be required by the party of the first part.

The said party of the second part further covenants and agrees to lay new mains for the passage of water when required by the party of the first part within said city, and that the said party of the first part may erect new hydrants from time to time to connect any of the water mains of said company.

The said party of the first part hereby covenants and agrees, in consideration and upon the condition of the performance by the party of the second part of the covenants and agreements hereinbefore contained, to pay annually to said party of the second part for the use of the water aforesaid for the period of five years, commencing when the said party of the second part shall be ready to furnish water to the said city under this agreement, the sum of eight thousand dollars, payable in annual payments, on the first day of January in each year, and in addition to pay to the party of the second part seven per cent. per annum upon the cost of any new mains or pipes which may be laid by said company by direction of said city :

Provided, however, that if the cost of the construction of said new reservoirs and works shall not amount to the sum of twenty thousand dollars, then there shall be deducted annually from the said sum of eight thousand dollars to be paid as aforesaid by said city a sum equal to the interest of such deficiency.

It is further understood and agreed between said parties that the payments herein provided shall be made by said city and
198 shall be received by said company of all other compensation to be made by the city for the use of the water as herein provided, and that until said company are ready to furnish water to said city pursuant to this agreement that the existing rights and obligations of the said parties shall remain unaffected by this agreement.

In witness whereof the mayor and clerk of said city have hereunto set their hands and affixed the corporate seal of said city, and on the part of said company the president and secretary have here-

unto set their hands and affixed their corporate seal the day and year first above written.

CHAS. ANDREWS, *Mayor.*
[L. S.] EDGAR S. MATTHEWS, *City Clerk.*
HORACE K. WHITE, *President.*
[L. S.] E. W. LEAVENWORTH,
Secretary pro Tem.

EXHIBIT 16.

Supreme Court.

In the Matter of the Application of the COMMON COUNCIL OF THE CITY OF SYRACUSE for the appointment of three commissioners to fix the terms upon which the Syracuse Water Company shall furnish water to the city of Syracuse.

The undersigned, the commissioners duly appointed according to law to prescribe the terms upon which the Syracuse Water
199 Company shall furnish water to the common council of the city of Syracuse for extinguishing fires and all other purposes, pursuant to and for the purpose named in an order duly made by the supreme court and entered in the clerk's office of Onondaga county on the 10th day of September, 1881, a copy of which is hereto annexed, having severally duly taken and subscribed the oath of office hereto annexed, and having been attended by the counsel of the said Syracuse Water Company and the said common council, and having heard the proofs and allegations of the respective parties and duly considered the same, do prescribe and decide that the said Syracuse Water Company shall furnish water to the common council of the city of Syracuse for extinguishing fires and for all other purposes for which water furnished by said company is now used by or under the direction of said common council, upon the terms that said common council of the city of Syracuse shall pay to said Syracuse Water Company the sum of twenty-six thousand dollars per annum for the three years from the first day of July, 1881, to the first day of July, 1884, the said annual payment to be made on the first day of November in each year for the year ending on the first day of March following.

Witness our hands, at the city of Syracuse, this 12th day of September, 1881.

PETER BURNS,
A. CADWELL BELDEN,
DANIEL CANDEE,
Commissioners.

(Endorsed:) Filed September 13, 1881.

200 EXHIBIT 17.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

We, Frank B. Merrill, John F. Moffett, Frank A. Hinds, Lucius Bradley, Chas. Wm. Kurtz, Alfred J. Luce, do by these presents, pursuant to and in conformity with the act of the Legislature of the

State of New York passed on the 17th day of February, 1848, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," and the several acts of the said Legislature amendatory thereof and supplemental thereto, and with the act of said Legislature passed March 30, 1880, and entitled "An act supplemental to chapter 40 of the laws of 1848, entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes,' and the amendments thereof," known as chapter 85 of the laws of 1880 and the acts amendatory thereof and supplemental thereto, associate ourselves together and form a company under the name and style of

The Central City Water Works Company,

and the following are hereby declared to be the corporate name of the said company, the objects for which the company is formed, *that* amount of its capital stock and the number of shares of which said capital stock consists, the term of the company's existence, the number of trustees and their names, the names of those who shall manage the concerns of the company for the first year, and the names of the town and county in which the operations of said company are to be carried on :

201 1. The corporate name of the said company is hereby declared to be The Central City Water Works Company.

2. The objects for which the company is formed are as follows: To supply the city of Syracuse, N. Y., and adjacent villages with pure and wholesome water for domestic use, for fire protection and other public purposes, and for the purpose of accumulating, storing, selling, furnishing, and supplying water in said city and adjacent villages for domestic, manufacturing, municipal, and agricultural purposes.

3. The capital stock of the said company shall be two million dollars, which shall be divided into twenty thousand shares of one hundred dollars each.

4. The said company shall commence on the 28th day of January, 1885, and shall continue in existence for the term of fifty years.

5. The number of trustees shall be five. Their names are Frank B. Merrill, John F. Moffett, Frank A. Hinds, Chas. Wm. Kurtz, Alfred J. Luce.

The names of those who shall manage the concerns of the said company for the first year are Frank S. Merrill, John F. Moffett, Frank A. Hinds, Chas. Wm. Kurtz, Alfred J. Luce.

6. The name of the town and county in which the operations of said company are to be carried on is the city of Syracuse, county of Onondaga, and State of New York.

202 Witness our hands and seals this tenth day of March, one thousand eight hundred and eighty-five.

FRANK B. MERRILL. [L. S.]
JOHN F. MOFFETT. [L. S.]
FRANK A. HINDS. [L. S.]
LUCIUS BRADLEY. [L. S.]
CHAS. WM. KURTZ. [L. S.]
ALFRED J. LUCE. [L. S.]

STATE OF NEW YORK, }
City and County of New York, } ss:

On the 10th day of March, in the year one thousand eight hundred and eighty-five, before me personally came Frank B. Merrill, Lucius Bradley, Chas. W. Kurtz, and Alfred J. Luce, to me well known and known to me to be the individuals described in and who executed the foregoing instrument, and they severally acknowledged that they executed the same.

T. ASHLEY BEALL,
[L. S.] *Notary Public, Kings County.*

Certificate filed in New York county.

(Clerk's certificate as to the genuineness of notary's signature.)

STATE OF NEW YORK, }
City of Watertown, County of Jefferson, } ss:

On the 11th day of March, A. D. one thousand eight hundred and eighty-five, before me personally came John F. Moffett and Frank A. Hinds, to me well known and known to me to be the individuals described in and who executed the foregoing in-
203 strument, and they severally acknowledged that they executed the same.

J. ATWELL, JR.,
Notary Public, Jefferson County.

(Clerk's certificate as to genuineness of notary's signature.)

Whereas the common council of the city of Syracuse, on the 23d day of March, 1885, at a meeting of said body adopted a resolution granting to the Central City Water Works Company certain rights and privileges upon certain conditions therein expressed and contained; and

Whereas said resolution was, on said 23d day of March, 1885, approved by Hon. Thomas Ryan, mayor of the city of Syracuse; and

Whereas by the fifteenth section of said resolution it was provided that the Central City Water Works Company shall, within ninety days after the approval of such resolution, file with the city clerk of the city of Syracuse its written acceptance thereof, duly acknowledged by one of its officers, and that in default of such acceptance all rights of said company under said resolution should cease:

Now, therefore, in consideration of the premises and in conformity with the said provision, the said Central City Water Works Company does hereby accept the said resolution and the grants, franchises, and privileges thereby conveyed and therein expressed and described, and also hereby accepts and assumes the perform-
204 ance of all the conditions and provisions contained in said resolution and which are required to be observed or performed by the said Central City Water Works Company.

In witness whereof the said Central City Water Works Company

has hereunto affixed its corporate name and seal and has caused the same to be attested by the signature of its president.

THE CENTRAL CITY WATER WORKS COMPANY,
[L. S.] FRANK B. MERRILL, *President.*

STATE OF NEW YORK, } ss:
Onondaga County, }

On this 4th day of April, 1885, before me, the subscriber, personally came Frank B. Merrill, to me personally known to be the same person who signed the foregoing instrument as president of the Central City Water Works Company, and acknowledged that he executed the same, and the said Frank B. Merrill, being by me duly sworn, did say that he resides at the city of New York and he is the president of the Central City Water Works Company; that the seal affixed to the foregoing instrument is the corporate seal of the Central City Water Works Company, and was thereto affixed under and in pursuance of a resolution of the trustees of the said company, and that he signed the same as president of said company by virtue of a like resolution of said trustees.

GEORGE McGOWAN,
Justice of the Peace.

(Endorsed:) Filed April 4th, 1885.

205 The foregoing contains all the evidence given and proceedings had upon the trial of the above actions, and because none of the foregoing proceedings had upon the trial of said actions appear in the record and judgment-roll herein.

The foregoing cases and exceptions have been settled, signed, and sealed this 27th day of October, 1885, and ordered filed in Onondaga county clerk's office.

P. C. WILLIAMS,
Justice of Supreme Court.

The above cases were afterwards summed up by the respective counsel, and requests to find in each case in due time submitted by plaintiff to the court and passed on by said court, and the refusals of said court to find as requested duly excepted to by plaintiff; and the following is a statement of said requests refused, the refusals of the court, and exceptions of plaintiff thereto:

Requests to Find and Refusals of Court and Exceptions thereto.

Plaintiff requested the court in each case to find, as questions of fact—

I.

That in pursuance of the authority so given and of said acts of the Legislature the trustees of the village of Syracuse did duly and legally, by deeds in writing, convey to the said Oliver Teall all of the rights, powers, and privileges of the village of Syracuse, its freeholders and inhabitants, to supply the village of Syracuse with

wholesome water, by virtue of the acts of 1821 and 1825 and
206 all the powers of said village in reference to that subject, and that said acts are set forth in said deeds of conveyance, Plaintiff's Exhibits 4 and 5.

The COURT: I do not so find in the language used.

To which refusal plaintiff duly excepted.

II.

That said conveyances were delivered to and accepted by said Oliver Teall upon the faith of said grant, and the said Oliver Teall duly took possession of all of said powers, rights, and privileges under said deeds, the said Oliver Teall and his grantees and associates, under the name of the Syracuse Water Works Company, furnishing said village with its entire water supply through pump logs down to the time of the incorporation of the village of Syracuse and to the time of the incorporation of the plaintiff, April 5, 1849.

The COURT: I do not so find.

To which refusal plaintiff duly excepted.

III.

That this was the only water supply then had or right to supply water held by the city of Syracuse under said charter, granted in express terms or otherwise, except the words "supplying the village with good and wholesome water," which precedes said reservation, are intended to be limited by and extended to said exception, reserving exclusive right to Oliver Teall and to his assigns to supply said city with pure and wholesome water.

207 The COURT: I do not so find.

To which refusal the plaintiff duly excepted.

IV.

That the city of Syracuse under said charter, by any terms therein expressed, had no right to supply itself with water in any other manner except through Oliver Teall, his heirs and assigns; and the Legislature did not intend to grant to said city, defendant, any other power or privilege to supply itself with water.

The COURT: I do not so find.

To which refusal plaintiff duly excepted.

V.

That the acts done and the privileges conferred before the defendant city's incorporation were expressly reserved to the plaintiff and its grantors and associates in the defendant city's charter and became a part thereof.

The COURT: I do not so find.

To which refusal the plaintiff duly excepted.

VI.

That the plaintiff has furnished and has continued to furnish the entire city supply of water, and is now furnishing the same, in pursuance of said request of April 21, 1851, and of said provision in its charter, and that the plaintiff has never neglected or refused
208 to furnish a sufficient supply of good, pure, and wholesome water to said city and its inhabitants since the said request of the said common council.

The COURT: I do not so find.

To which refusal the plaintiff duly excepted.

VII.

That by the plaintiff's charter, passed as aforesaid, the city of Syracuse has not the right, power, and privilege of supplying itself with water otherwise than in the manner pointed out as follows by section 29 thereof:

That there is no power given by the charters of 1857 and 1885 for the city of Syracuse to supply itself with water for fire, domestic, and other purposes otherwise than in accordance with the pre-existing laws and provisions.

The COURT: I do not so find.

To which refusal the plaintiff duly excepted.

VIII.

That the only power in the city to raise taxes to pay for water dues or rates to the city is confined to water dues under chapter 445 of the laws of 1870, sec. 2, and that the provisions in the charter of 1857, title 4, section 4, subdivision 2, and of 1885, title 4, section 22, subdivision 2, are the only ones on the subject of water supply in said charter, and that these provisions are the only part of the same charter which provide for the payment of these water dues to the plaintiff, and that the dues fixed by said charters were at the time of the fixing of the same and the enacting of said char-
209 ters the amounts due or to become due the plaintiff under contracts or awards, and were made with reference to the same and not otherwise.

The COURT: I do not so find.

To which refusal the plaintiff duly excepted.

IX.

That the plaintiff has laid all the pipes and mains asked for by the common council, and have extended their works from time to time and invested therein, under the direct sanction and approval of the common council, the sum of seven hundred and twenty-eight thousand dollars or thereabouts, nearly all of which has been expended since the aforesaid request by the resolution aforesaid of

April 21, 1851, and that the city of Syracuse has never attempted or offered to reinvest itself of the said water works or has offered to take or pay for the same in any manner.

The COURT: I do not find the whole as requested.

To which the plaintiff duly excepted.

X.

That the plaintiff has the exclusive right to supply the city of Syracuse with water to extinguish fires and for other purposes, and that the city of Syracuse has no right to grant that right and power of supply to the defendant, The Central City Water Works Company, nor to any other person, persons, or corporation by any power or authority from the State of New York or otherwise under existing laws.

210 The COURT: I do not so find.

To which refusal plaintiff duly excepted.

XI.

That the city of Syracuse, through its common council, on the 23d of March, 1885, after the commencement of this action, did, by resolution passed in common council, grant to the defendant, The Central City Water Works Company, a franchise to bring water into the city and distribute the same, making a contract with said last-named company for twenty years to supply said city with water for fire and other purposes and interfering with the rights, powers, and privileges of the plaintiff to furnish said city with water to extinguish fires, and for other purposes.

The COURT: I do not so find, because of clause as to interference with the plaintiff's rights, &c.

To which refusal plaintiff duly excepted.

XII.

That the said defendant, The Central City Water Works Company, has accepted said grant and duly filed their acceptance thereof in the office of the city clerk in said city, and are now and were at the time of the commencement of this action attempting to use and exercise said grant and are threatening to use and exercise the same, and that the said mayor and the common council of said city are assisting the said defendant, The Central City Water Works Company, in attempting to carry out the same.

The COURT: I do not so find by reason of reference to
211 former request, which is not found.

To which refusal plaintiff duly excepted.

XIII.

That the plaintiff has vested and exclusive rights, powers, and

privileges to furnish the city of Syracuse with pure and wholesome water, and that their rights, privileges, and powers are continuing powers until the city reinvests itself of the same in the manner pointed out in the several acts and charters hereinbefore set forth and referred to in these findings.

The COURT: I do not so find.

To which refusal the plaintiff duly excepted.

XIV.

That the defendants have no right, power, or authority to interfere with or appropriate the same (said water privileges) in any manner, except by compensation to the plaintiff under said several acts.

The COURT: I do not so find.

To which refusal the plaintiff duly excepted.

XV.

That the city of Syracuse, by its conduct towards and dealings with and relations to the plaintiff, is estopped from granting any power or privilege to the other defendant, The Central City Water Works Company, to bring water into said city under the contract made with them or to enter upon its streets for that purpose, to dig and lay pipe and mains.

The COURT: I do not so find.

To which refusal the plaintiff duly excepted.

212 XVI.

That the Syracuse Water Company has been in the absolute, actual possession and enjoyment of all of said rights, powers, and privileges for more than thirty-four years last past, and was in the actual possession and enjoyment of the same at the time of the commencement of these actions.

The COURT: I do not so find by reason of reference to last request, which I do not find.

To which refusal plaintiff duly excepted.

XVII.

That the object of the several acts on the subject of water supply was to supply the village and city of Syracuse with pure and wholesome water, beginning with the act of 1821, and that it was the intention of the Legislature to assist the said village and the city of Syracuse to supply the city with water through the plaintiff exclusively.

The COURT: I do not so find.

To which refusal the plaintiff duly excepted.

XVIII.

That the plaintiff has existing, vested equities to supply water to said city and its inhabitants exclusively; that the Legislature of this State has never repealed or in any manner interfered with the conveyed and vested rights of the plaintiff and its grantors or assignors, and all of such rights, powers, and privileges remained in the plaintiff.

213 The COURT: I do not so find.

To which refusal the plaintiff duly excepted.

XIX.

That under the charter and acts of the parties there is an existing contract between the city corporation and the plaintiff by which the plaintiff is entitled to supply the city with water for municipal purposes.

The COURT: I cannot find a perpetual contract so exists. Whether one exists for any definite time I am unable to find from the evidence.

To which refusal the plaintiff duly excepted.

The plaintiff requested the court to find as matters of law:

I.

That the plaintiff is entitled to the relief demanded in the complaint in these actions.

The COURT: I do not so find.

And plaintiff duly excepted.

II.

That the conveyance from the village of Syracuse to Oliver Teall and his assigns became absolute upon the acceptance by said Teall of said conveyance, and gave to said Teall and his assigns the exclusive right to furnish the city defendant and its inhabitants with water under the several charters of the city defendant and of the plaintiff.

The COURT: I do not so find.

To which refusal the plaintiff duly excepted.

III.

214 That the Legislature had no right or power to pass any law impairing the plaintiff's rights to furnish water under said conveyances and the several acts confirming the same and giving those rights to the plaintiff.

The COURT: I do not so find; plaintiff had no such rights or powers.

To which refusal plaintiff duly excepted.

IV.

That said rights, powers, and privileges became vested in the plaintiff, and that the Legislature or the city defendant had no right or power to grant the same or any part thereof to the Central City Water Works Company, and that all rights not vested in the plaintiff remain in the State and are not given to the city.

The COURT: I do not so find.

To which refusal the plaintiff duly excepted.

V.

That the grant by the city defendant, through its common council, to the defendant, The Central City Water Works Company, was and is void, and that said defendant city gave and the defendant, The Central City Water Works Company, took no rights, powers, or privileges under the same as against the plaintiff, and that no rights were given or acquired under said grant.

The COURT: I do not so find.

To which refusal plaintiff duly excepted.

215 VI.

That the plaintiff has the exclusive right and power to supply the city of Syracuse and its inhabitants with pure and wholesome water for extinguishing fires and other purposes, and that the city defendant had no right to grant the same away.

The COURT: I do not so find.

To which refusal the plaintiff duly excepted.

VII.

That as the plaintiff has been in the actual possession and enjoyment of all such rights, powers, and privileges to furnish said water supply for thirty-four years under the defendant city's express directions, orders, and its requests as aforesaid that the defendant city is estopped by its conduct toward the plaintiff from claiming any power in itself to furnish water to itself without taking plaintiff's plant and property and paying for the same, and is estopped from denying that the plaintiff has the exclusive right to furnish water to the said city.

The COURT: I do not so find.

To which refusal the plaintiff duly excepted.

VIII.

That the defendants should be restrained from interfering with the plaintiff's rights, powers, and privileges under their charter and otherwise, and a perpetual injunction should be granted restraining the defendants in all respects as set forth in the original in-
216 junction orders and the same made permanent in each of

said actions and judgment ordered accordingly, with costs in each action for the plaintiff.

The COURT: I do not so find and decide.

To which refusal the plaintiff duly excepted.

Subsequently the court made and filed its report in writing in each action contained in the judgment-roll annexed; to which report and refusals to find as requested plaintiff in due time excepted and filed its exceptions thereto in writing in each action prefixed to the judgment-roll therein.

Exceptions to Findings.

Supreme Court.

THE SYRACUSE WATER COMPANY
against
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY.

GENTLEMEN: The plaintiff excepts to the findings of the court herein as follows:

First. To the findings of fact—

1. The plaintiff excepts to so much of the eleventh finding as finds that section 29 of the act of 1849 was inserted in said act at the request and instance of said city.

2. Plaintiff excepts to so much of the twelfth finding as
217 finds that the springs and water supply constructed in the eastern part of the city were abandoned at about the time of the incorporation of plaintiff.

3. Plaintiff excepts to the fourteenth finding as finds that plaintiff has not constructed water mains, and that a large portion of the city of Syracuse is without water supply, so far as the plaintiff is concerned.

4. Plaintiff excepts to the finding that the water system of the plaintiff is unable to supply the elevated portions of said city, as set forth in the fifteenth finding.

5. Plaintiff excepts to the findings that a portion of the water mains of said city consists of sheet-iron pipes and cement and are inadequate for the purpose intended, as set forth in the sixteenth finding.

6. Plaintiff excepts to the finding that the greater portion of the capital stock of the plaintiff consists of stock dividends, as set forth in the seventeenth finding.

7. Plaintiff excepts to the finding that the parties failed to agree because of the demand of plaintiff to be paid $40,000 per annum, as set forth in the nineteenth finding.

8. Plaintiff excepts to so much of finding twenty-one as finds that the improvements or expenditures incident to the extension of plaintiff's works were not made by any promise, representation, or inducement of said city.

9. Plaintiff excepts to the finding that the revised charter of the city of Syracuse, passed February 21, 1885, empowered said
218 city to make ordinances, &c., for the purpose of supplying the city with water, as set forth in the 22nd finding.

10. Plaintiff excepts to so much of the 23rd finding as finds that under the provisions of the laws of 1880 and 1884 the city of Syracuse was authorized to permit the defendant, The Central City Water Works Company, to use the streets of said city to lay mains, &c., and to enter into contracts with said company to supply said city with water.

11. The plaintiff excepts to so much of finding 24 as finds that defendant, The Central City Water Works Company, was duly organized for the purpose therein mentioned.

12th. Plaintiff excepts to so much of findings 25, 26, and 27 as finds defendant, Central City Water Works Company, duly applied to the common council of the city of Syracuse for its consent to construct water works and lay water mains, &c., and that said common council duly passed a resolution referred to therein, and that said company duly filed its written acceptance thereof, and that said company has duly entered upon the performance of the conditions contained in said resolution.

Second. To the conclusions of law—

1. Plaintiff excepts to the conclusion that the plaintiff never acquired an exclusive right to supply the city of Syracuse with water or to use the streets for that purpose.

2. Plaintiff excepts to the conclusion that the city of Syracuse is not estopped from granting the Central City Water Works Company the right to construct water works within the city for the purpose of supplying it with water.

219 3. Plaintiff excepts to the conclusion that the said Central City Water Works Company is not estopped from accepting the franchises created by the resolution passed by the common council of the city of Syracuse March 23, 1885.

4. Plaintiff excepts to the conclusion that the common council of the city of Syracuse has the right and power of granting to the Central City Water Works Company the franchise contained in the resolution passed by that body March 23, 1885.

5. Plaintiff excepts to the conclusion that the right of laying mains, &c., in the streets of said city and of constructing reservoirs, &c., and of maintaining water works in said city was conferred by said resolution.

6. Plaintiff excepts to the conclusions that the plaintiff's complaint should be dismissed with costs and the injunctions obtained herein dissolved.

Third. To the refusals to find as requested by the plaintiff the plaintiff excepts as follows:

1. To the refusal to find that under the charter of the city and the acts of the plaintiff and the city there is an existing contract between the city corporation and the plaintiff by which the plaintiff is entitled to supply the city with water for municipal purposes.

2. To the refusal to find that, in pursuance to the authority given by the resolutions passed by the board of trustees of the village of Syracuse and the several acts of the Legislature, the trustees of the village of Syracuse did duly and legally, by deeds in writing, convey to Oliver Teall all the rights, powers, and privileges of the village of Syracuse, its freeholders and inhabitants, to supply
220 the village of Syracuse with wholesome water by virtue of the acts of 1821 and 1825 and of all the powers of said village in reference to that subject.

3. To the refusal to find that said conveyances were delivered to and accepted by said Oliver Teall upon the faith of said grants, and that said Teall duly took possession of all said powers, rights, and privileges under said deeds, the said Teall and his grantors and associates, under the name of "The Syracuse Water Works Company," furnishing said village with its entire supply through pump logs down to the time of the incorporation of the city of Syracuse and to the time of the incorporation of the plaintiff, April 5, 1849.

4. To the refusal to find that the right to supply water to said city through Oliver Teall and his assigns was the only right then had or right to supply water held by the city of Syracuse under said charter, granted in express terms or otherwise, except the words "supplying the village with good and wholesome water," which preceded said reservation and are intended to be limited by and extended to said exception, reserving the exclusive right to Oliver Teall and to his assigns to supply said city with pure and wholesome water.

5. To the refusal to find that the city of Syracuse, under the charter or by any terms therein expressed, had no right to supply itself with water in any other manner except through Oliver Teall, his heirs and assigns, and the Legislature did not intend to grant the said city defendant any other right, power, or privilege to supply itself with pure and wholesome water.

221 6. To the refusal to find that the trustees of the village of Syracuse, before its incorporation as a city, to wit, Nov. 8, 1847, and the common council of the city, shortly after being incorporated, to wit, July 5, 1848, adopted resolutions recognizing, confirming, and granting to said Oliver Teall and his associates, then called the Syracuse Water Works Company, the right to go to Furnace brook and any sources of supply, wherever situated, in order to supply Syracuse with wholesome water, and that at all times afterwards the said company acted upon the said resolutions and expended very large sums of money in procuring and furnishing such supply from said sources, and that the acts done and privileges conferred before the defendant city's incorporation were expressly reserved to the plaintiff and its grantors and associates in the defendant city's charter and became a part thereof.

7. To the refusal to find that the plaintiff has furnished and has continued to furnish the entire city supply of water and is now furnishing the same in pursuance of defendant city's request and the provisions of the charter, and that the plaintiff has never neglected or refused to furnish a sufficient supply of good, pure, and whole-

some water to said city and its inhabitants since the said request of the said common council.

8. To the refusal to find that by the plaintiff's charter passed in 1849, section 29, chapter 224, the city of Syracuse has not the right, power, and privilege of supplying itself with water otherwise than as in the manner pointed out therein, and there is no power
222 given by the charter of 1857 and of 1885 for the city of Syracuse to supply itself with water for fire, domestic, or other purposes otherwise than in accordance with pre-existing laws and provisions.

9. To the refusal to find that the only power in the city to raise taxes to pay for water dues and rates to the city is confined to water dues under chapter 445 of the laws of 1870, sec 2, and that the provisions in the charters of 1857, title 4, sec. 4, sub. 2, and of 1885, title 4, sec. 22, sub. 2, are the only ones on the subject of water supply in said charters, and that these provisions are only a part of the same charters which provide for the payment of these water dues to the plaintiff, and that the dues fixed by said charters were at the time of fixing the same and the enacting of said charters the amounts due or to become due the plaintiff under contracts or awards and were made with reference to the same and not otherwise.

10. To the refusal to find that plaintiff laid all the pipes and mains asked for by the common council, and have extended their works from time to time and invested therein, under the direct sanction and approval of the common council, the sum of about $728,000, nearly all which has been expended since the request by the resolution of April 21, 1851, and that the city of Syracuse has never attempted or offered to reinvest itself with said water works nor has offered to take or pay for the same in any manner.

11. To the refusal to find that the plaintiff has the exclusive right to supply the city of Syracuse with water to extinguish fires and for other purposes, and that the city of Syracuse has no right to
223 grant that right and power of supply to the defendant, The Central City Water Works Company, nor to any other person, persons, or corporations by any power or authority from the State of New York or otherwise under existing laws.

12. To the refusal to find that the city of Syracuse did, before the commencement of this action, grant to the defendant, The Central City Water Works Company, a franchise to bring water into the city and distribute the same, making a contract with said company for twenty years to supply said city with water for fire and other purposes, and interfering with the rights, powers, and privileges of the plaintiff to furnish said city with water to extinguish fires and for other purposes.

13. To the refusal to find that the defendant, The Central City Water Works Company, has accepted said grant and duly filed their acceptance thereof in the office of the city clerk in said city, and are now and were at the commencement of this action attempting to use and exercise said grant and are threatening to use and exercise the same by and with the consent and assistance of the city defendant.

14. To the refusal to find that the plaintiff has vested and exclusive rights, powers, and privileges to furnish the city of Syracuse with pure and wholesome water, and that their rights, privileges, and powers are continuing powers until the city reinvests itself of the same in the manner pointed out by the said several acts and chapters herein set forth and referred to in these requests.

15. To the refusal to find that the defendants have no right,
224 power, or authority to interfere with or appropriate the same in any manner except by compensation to the plaintiff under said several acts.

16. To the refusal to find that the city of Syracuse, by its conduct towards and dealings with and relations to the plaintiff, is estopped from granting any power or privilege to the other defendant to bring water into said city under said contract.

17. To the refusal to find that the plaintiff has been in the absolute possession and enjoyment of all said rights, powers, and privileges for more than thirty-four years last past and was in the actual possession of the same at the time of the commencement of these actions.

18. To the refusal to find that the object of the several acts on the subject of water supply was to supply the village and the city of Syracuse with pure and wholesome water, beginning with the act of 1821, and it was the intention of the Legislature to assist the said village and city of Syracuse to supply the city with water through the plaintiff exclusively.

19. To the refusal to find that the plaintiff has existing vested equities to supply water to said city and its inhabitants exclusively.

20. To the refusal to find that the Legislature of this State has never repealed or in any manner interfered with the conveyed and vested rights of the plaintiff and its grantors or assignors, and that all such rights, powers, and privileges remain in the plaintiff.

21. To the refusal to find that plaintiff is entitled to the relief demanded in the complaint.

22. To the refusal to find that the conveyance from the village of Syracuse to Oliver Teall and his assigns became absolute
225 upon the acceptance by said Teall by said conveyance, and gave to said Teall and his assigns the exclusive right to furnish the city and its inhabitants with water under the several charters of the city and of the plaintiff.

23. To the refusal to find that the Legislature had no right or power to pass any law impairing the plaintiff's rights to furnish water under said conveyances and the several acts confirming the same and giving those rights to the plaintiff.

24. To the refusal to find that said rights, powers, and privileges became vested in the plaintiff, and that the Legislature of the city, defendant, had no power to grant the same or any part thereof to the Central City Water Works Company, and that all rights not vested in the plaintiff remain in the State and are not given to the city.

25. To the refusal to find that the grant to plaintiff and its assignors and grantors was a perpetual grant, continuing until the

expiration of 35 years from April 22, 1834, and thereafter until the said defendant, the city, reinvested itself of the same under said act and the charter of the plaintiff's incorporation.

26. To the refusal to find that the grant by the city, defendant, through its common council, to the Central City Water Works Company was and is void, and that said defendant city gave and the said Central Water Works Company took no rights, powers, or privileges under the same as against the plaintiff, and that no rights were given or acquired under said grant.

27. To the refusal to find that the plaintiff has the exclu-
226 sive right and power to supply the city of Syracuse and its inhabitants with pure and wholesome water for extinguishing fires and other purposes, and that the city had no right to grant the same away.

28. To the refusal to find that the plaintiff has been in the actual possession and enjoyment of all of said rights, powers, and privileges to furnish said water supply for 34 years under the city's express directions and orders and its request as aforesaid; that the city is estopped by its conduct toward the plaintiff from claiming any power in itself to furnish water to itself without taking plaintiff's plant and property and paying for the same, and is estopped from denying that the plaintiff has the exclusive right to furnish water to the said city.

29. To the refusal to find that the defendant should be restrained from interfering with the plaintiff's rights, powers, and privileges under *their* charter and otherwise; and a perpetual injunction should be granted, restraining the defendant in all respects as set forth in the original injunction orders, and the same made permanent in this action, and that judgment be entered accordingly.

FORBES, BROWN & TRACY,
Attorneys for Plaintiff.

To E. S. Jenney, attorney for city, and Louis Marshall, attorney for C. C. W. W. Co. and clerk of county of Onondaga.

227 *Judgment-Roll.*

Supreme Court.

Trial desired in Onondaga county.

THE SYRACUSE WATER COMPANY
against
THE CITY OF SYRACUSE and CENTRAL CITY WATER WORKS COMPANY.

To the above-named defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer

judgment will be taken against you by default for the relief demanded in the complaint.

Dated May 18, 1885.

FORBES, BROWN & TRACY,
Plaintiff's Attorneys.

Office address and post-office address, Stevens block, Syracuse, New York.

Supreme Court, Onondaga County.

THE SYRACUSE WATER *County*
against
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY.

The plaintiff complains against the defendants and for a cause of action respectfully shows to this court—

228 That the plaintiff is a domestic corporation duly and legally organized and incorporated under the laws of the State of New York, and is doing business and having its principal place of business at the city of Syracuse, N. Y., under the name, style, and organization of "The Syracuse Water Company."

That the defendant, The City of Syracuse, is a domestic corporation duly and legally organized under the laws of the State of New York, under chap. 475 of the laws of 1847, passed December 14, 1847, and the several acts amendatory thereof and in addition thereto, and that the mayor and the aldermen and common council of the said city are the acting municipal officers of said city, and are now and for a long time have been exercising the duties appertaining to said officers.

That the defendant, The Central City Water Works Company, claims to be a domestic corporation organized under the laws of this State for the purpose of supplying the city of Syracuse with water, and that it has commenced business as such corporation.

That under and by virtue of the charter of the city of Syracuse the said board of common council were and are invested with the right, power, and authority to grant certain licenses, grants, and franchises to certain persons and corporations to do and perform certain acts within the provisions of said charter and not otherwise.

That the plaintiff's corporation were by several acts of the Legislature duly and legally passed and enacted and becoming the laws of the State of New York, to wit, an act to supply the village of Syracuse with wholesome water, passed March 27, 1821, which

229 is declared by its provisions to be a public act; also an act entitled An act to incorporate the village of Syracuse, passed April 13, 1825, chapter 124; also an act entitled An act to amend the act entitled An act to incorporate the village of Syracuse, passed April 13, 1825, and amended April 23, 1829, by chapter 236 of the laws of 1829; also an act entitled — to amend the act entitled An act to incorporate the village of Syracuse, and the act amending the same, passed April 22, 1834, being chapter 151 of the laws of 1834;

also chapter 224 of the laws of 1849, entitled An act to incorporate the Syracuse City Water Works Company; also chapter 104 of the laws of 1851, passed April 8, 1851, entitled An act to amend the act entitled An act to incorporate the Syracuse City Water Works Company, passed April 5, 1850; also chapter 35 of the laws of 1853, passed March 22, 1853, entitled An act to amend an act entitled An act to incorporate the Syracuse City Water Works Company, passed April 5, 1849; also chapter 475 of the laws of 1847, passed December 14, 1847; also chapter 370 of the laws of 1879, passed May 26, 1879, entitled An act to amend chapter 224 of the laws of 1849; also chapter 104 of the laws of 1864, passed March 31, 1864, entitled An act to amend an act entitled "An act in relation to the Syracuse City Water Works Company," passed April 5, 1849; also chapter 71, laws of 1865, passed March 3, 1865, entitled An act to amend an act entitled "An act to incorporate the Syracuse City Water Works Company," passed April 5, 1849; also chapter 36, laws of 1877, passed March 6, 1877, entitled An act to amend chapter 104 of the laws of 1864, entitled An act to amend an act entitled "An act
230 in relation to the Syracuse City Water Works Company, passed April 5, 1849," and the several acts amendatory thereof, duly granted the right, power, — privileges exclusively of building and erecting and laying plants, reservoirs, dams, mains, pipes, hydrants, and water fixtures through, along, and upon the streets, lanes, alleys, and public parks and squares of the defendant, said grant having been taken from the village of Syracuse and confirmed by, through, and under the power, authority, and legal proceedings on the part and behalf of the defendant, duly and legally made, granted, accepted, and entered into by the plaintiff on the one side and the defendant on the other side.

That upon the organization of the Syracuse Water Works Company said company became vested with said exclusive powers, rights, grants, privileges, and franchises by conveyance and otherwise.

That after said grant in 1849 the said plaintiff, while thus vested with said rights, powers, and privileges and franchises so granted as aforesaid, *the plaintiff* entered upon the work of building mains, reservoirs, dams, pipes, hydrants, and erecting pumps, machinery, and appliances to enjoy and use said grant, powers, privileges, and franchises, and did so erect, build, and construct the same, and laid out, expended, and invested thereon from time to time the sum of seven hundred and twenty-eight thousand dollars, or thereabout, and the same was done with the consent, approval, and under the direction of the defendants and its officers, and that the water which has been furnished by plaintiff pursuant to such right, powers, and privileges has been furnished with the approval by said city
231 from time to time as to its sources and quality, and with full knowledge thereof, and has been accepted and used by said city, and that it has been of uniform quality and grade.

That under and by said grant, power, and franchise the said defendant reserved to itself the right and power to take said grant, power, and franchise from the plaintiff upon certain conditions set

forth and provided for therein, which power and privilege said defendant has not at any time exercised in that manner and as provided for in and by the said grant and conveyance.

That said rights, powers, privileges, and franchises have been so exercised by said plaintiff and its grantors, with the acquiescence and consent of defendant, for upwards of fifty years.

That the said defendant, The City of Syracuse, through its common council and officers, threatens and claims the right to interfere with the said grant, powers, privileges, and franchises of the plaintiff acquired as aforesaid, and to destroy, injure, and depreciate in value said plaintiff's property by granting to the defendant, The Central City Water Works Company, who claim to be organized as a domestic corporation as aforesaid, the rights, powers, privileges, and franchises so acquired by the plaintiff.

That said corporation are without the legal right or power or authority, except by force, to take said grant, or to enter upon the performance of their contract, if one is made, in digging up the streets, lanes, parks, and squares of the city, defendant, or to enter upon any contract with said city.

That the plaintiff is informed and believes that the public
232 health of said defendant, The City of Syracuse, and its inhabitants may and will be greatly endangered and impaired by the digging up of the streets, mains, and hydrants and opening the sewerage of said city, and that the same will become a public nuisance, and that the granting of said franchise would result in the performance of said several dangerous and injurious acts.

That many of the public streets are paved and graded, and that the digging up said streets would necessarily destroy and greatly injure the same and the rights of the plaintiff, and that the same cannot be properly restored.

That the plaintiff and stock and bond holders are heavy tax-payers and have a deep interest in the welfare of said city; that in carrying out said grant, powers, and franchises the plaintiff has necessarily issued bonds, predicated upon their grant and privileges, to the extent of more than $200,000, and which are now drawing interest from the earnings of said plaintiff at the rate of six and seven per cent. per annum, and that the principal cannot be paid in full until the year 1908, and the granting of said franchise will hazard the rights of said bondholders and imperils the interest of the plaintiff in their capital and stock and other property; that the plaintiff's franchise so as aforesaid granted to it by the Legislature of this State would be destroyed, and that the stock and bonds of the plaintiff would be rendered of little or no value, and for which damages and loss neither the plaintiff nor its stock and bond holders would have any adequate remedy at law, and that the granting of said franchise to said new company will irreparably damage this plaintiff.

233 Second.

Further complaining against defendants, the plaintiff avers that is it a domestic corporation, duly and legally organized and incorporated under the laws of this State, and is doing business and hav-

ing its principal place of business at Syracuse, N. Y., under the name and style of the Syracuse Water Company.

That the defendant, The City of Syracuse, is a domestic municipal corporation, duly formed and organized under the laws of the State of New York, passed Dec. 14, 1847, chapter 475, the several acts amendatory thereof, and that the mayor and aldermen and common council of said city are the acting municipal officers of said city, and are now and for a long time have been exercising the duties appertaining to said offices.

That the defendant, The Central City Water Works Company, claims to be a domestic corporation, organized under the laws of this State for the purpose of supplying the city of Syracuse with water, and that it has commenced business as such corporation at said city of Syracuse, as plaintiff is informed and believes.

And the plaintiff further avers that some time prior to the 23d day of March, 1885, the defendant, The Central City Water Works Company, made application to the defendant, The City of Syracuse, its mayor and common council, for leave to lay pipes and mains in the public streets of said city and to carry on the business of supplying said city with water, and which leave was necessary and essential for the purposes contemplated by said water company, and to
234 that end a resolution was prepared containing various conditions, agreements, and stipulations which were to be accepted by said defendant, The Central City Water Works Company, and which resolution fully authorized and empowered said company to build, construct, maintain, own, and operate water works in the city of Syracuse, and which resolution was presented to the defendant, The City of Syracuse, its mayor and common council, and was by them accepted and received for consideration and adoption; that at a regular meeting of the common council of said city, to be held on the 23d of March, 1885, said resolution was to be taken up for consideration and final action, as plaintiff was informed and believed; that the plaintiff, knowing and insisting that the passage of such resolution and the granting of the application therein contained would irreparably damage this plaintiff, and that thereby the plaintiff would be deprived of valuable franchises granted to it by defendant, The City of Syracuse, and the Legislature of this State, and by contracts and dealings had between plaintiff and said defendants for nearly fifty years, directed an action to be commenced in the supreme court of the State of New York on the said 23d day of March, 1885, for the purpose of restraining the defendant, The City of Syracuse, and its mayor and common council from passing said resolution and from granting to the defendant, The Central City Water Works Company, or any other person or persons any rights, power, privileges, or franchises to lay pipes, mains, or hydrants in and upon the streets and public places of said city, and also for the purpose of having the plaintiff's rights and privileges under
235 said statutes and grants determined and adjudicated by the court; that therefore this plaintiff's attorneys at once prepared the proper papers and obtained a preliminary injunction and

order to show cause, of which the following are a copy, the originals of which have been filed in the clerk's office of Onondaga county:

Supreme Court.

Trial desired in Onondaga county.

SYRACUSE WATER COMPANY *against* THE CITY OF SYRACUSE. } "A."

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated March 23, 1885.

FORBES, BROWN & TRACY,
Plaintiff's Attorneys.

Office address and post-office address: 1, 2, and 3 Stevens block, Syracuse, N. Y.

236 Supreme Court, Onondaga County.

THE SYRACUSE WATER COMPANY *against* THE CITY OF SYRACUSE.

The plaintiff complains against the defendant, and for a cause of action respectfully shows to this court:

1. That the plaintiff is a domestic corporation, duly and legally organized and incorporated under the laws of the State of New York, and is doing business and having its principal place of business at the city of Syracuse, N. Y., under the name, style, and organization of "the Syracuse Water Company."

2. That the defendant is a domestic corporation, duly and legally organized under the laws of the State of New York, under chapter 475 of the laws of 1847, passed Dec. 14, 1847, and the several acts amendatory thereof and in addition thereto, and that the mayor and aldermen and common council of said city are the acting municipal officers of said city and are now and for a long time have been exercising the duties appertaining to said officers.

That under and by virtue of the charter of the city of Syracuse the said board of common council were and are invested with the right, power, and authority to grant certain licenses, grants, and franchises to certain persons and corporations, to do and perform certain acts within the provision of said charter, and not otherwise.

That the plaintiff's corporation were by several acts of the Legis-

lature, duly and legally passed and enacted and becoming
237 the laws of the State of New York, duly granted the right, power, — privileges exclusively of building and erecting and laying plants, reservoirs, dams, mains, pipes, hydrants, and water fixtures through, along, and upon the streets, lanes, alleys, and public parks and squares of the defendant, said grant having been taken from the village of Syracuse and confirmed by, through, and under the power, authority, and legal proceedings on the part and behalf of the defendant, duly and legally made, granted, accepted, and entered into by the plaintiff on the one side and the defendant on the other side, as plaintiff is informed and believes.

That upon the organization of the Syracuse City Water Works Company said company became vested with said exclusive powers, rights, grants, privileges, and franchises, by conveyance and otherwise, as plaintiff is informed and believes.

That after said grant, in 1849, the said plaintiff, while thus vested with said rights, powers and privileges and franchises so granted as aforesaid, *the plaintiff* entered upon the work of building mains, reservoirs, dams, pipes, hydrants, and erecting pumps, machinery, and appliances to enjoy and use said grant, powers, privileges, and franchises, and did so erect, build, and construct the same, and laid out, expended, and invested thereon from time to time the sum of seven hundred and twenty-eight thousand dollars or thereabout, and the same was done with the consent, approval, and under the direction of the defendant and its officers, as plaintiff is informed and believes.

That under and by said grant, power, and franchise said defend-
ant reserved to itself the right and power to take said grant,
238 powers, and franchise from the defendant, upon certain conditions set forth and provided for therein, which power and privilege said plaintiff has not at any time exercised in that manner and as provided for in and by the said grant and conveyance.

That said rights, powers, privileges, and franchises have been so exercised by said plaintiff and its grantors, with the acquiescence and consent of defendant, for upwards of fifty years, as plaintiff is informed and believes.

That the said defendant, through its common council and officers, threatens and claims the right to interfere with the said grant, powers, privileges, and franchises of the plaintiff, acquired as aforesaid, and to destroy, injure, and depreciate in value said plaintiff's property, by granting to the Central City Water Works Company, who claim to be organized as a domestic corporation, the rights, powers, privileges, and franchises so acquired by the plaintiff.

That said corporation are without the legal right or power or authority, except by force, to take said grant or to enter upon the performance of their contract, if one is made, in digging up the streets, lanes, and parks and squares of the defendant or to enter upon any contract with said city, as plaintiff is informed and believes.

That the plaintiff is informed and believes that the public health

of said defendant, The City of Syracuse, and its inhabitants may and will be greatly endangered and impaired by the digging up of the streets, mains, and hydrants and opening the sewerage of said city, and that the same will become a public nuisance, and
239 that the granting of said franchise would result in the performance of said several dangerous and injurious acts, as plaintiff is informed and believes.

That many of the public streets are paved and graded, and that the digging up of said streets would necessarily destroy and greatly injure the same and the rights of the plaintiff, and that the same cannot be properly restored, as plaintiff is informed.

That the plaintiff and stock and bond holders are heavy tax-payers and have a deep interest in the welfare of said city; that in carrying out said grant, powers, and franchises the plaintiff has necessarily issued bonds, predicated upon their grant and privilege, to the extent of more than $200,000, and which are now drawing interest from the earnings of said plaintiff at the rate of six and seven per cent. per annum, and that the principal cannot be paid in full until the year 1908, and that the granting of said franchise will or may hazard the rights of said bondholders and imperil the interest of the plaintiff in their capital and stock and other property.

Wherefore the plaintiff demands that the defendant, its officers, agents, and attorneys, and all persons acting for and in their behalf may be restrained from granting any rights, powers, privileges, or franchises of any name or nature to the Central City Water Works Company or to any other person or persons to dig up the streets, mains, and sewers of said city or to lay any pipes, mains, or hydrants in and upon or along any of the streets of said city, or in any lanes, squares, or public parks, except as the plaintiff may in prudence lawfully do in the premises.

240 3. That the rights and privileges of the plaintiff under said grants may be determined and adjudicated upon and settled by this court.

4. For such other, further, or different rule, order, or relief as the court may deem fit and equitable in the premises, with costs.

FORBES, BROWN & TRACY,
Plaintiff's Attorneys, 1, 2, 3, and 4 Stevens Block, Syracuse, N. Y.

STATE OF NEW YORK, } ss:
Onondaga County, }

E. W. Leavenworth, being duly sworn says that he is and for a long time has been the president of the plaintiff; that he has heard read the foregoing complaint and knows its contents, and that the same is true of his own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

E. W. LEAVENWORTH.

Sworn to before me this 23d day of March, 1885.

D. T. WILLIS,
Com. of Deeds, Syracuse, Onondaga Co., N. Y.

Supreme Court.

SYRACUSE WATER COMPANY
against
THE CITY OF SYRACUSE. } "C."

ONONDAGA COUNTY, *ss:*

ELIAS W. LEAVENWORTH, being duly sworn, says that he is
241 the president of said plaintiff, and has been for many years past; that he is familiar with the several acts of the Legislature of the State of New York referred to in the complaint herein and with the provisions of the charter of the city of Syracuse and with the franchises and rights granted thereby to the plaintiff, and that the allegations contained in said complaint in regard thereto are true to the best of deponent's knowledge, information, and belief.

Deponent further says, as he is advised and verily believes, that by said several acts and the dealings and contracts from time to time between plaintiff and defendant thereunder that said plaintiff is entitled to the exclusive privilege of carrying on the water business in the city of Syracuse and supplying the inhabitants thereof with water until the rights of plaintiff in said business are taken and assumed by the defendant and the plaintiff paid therefor in the manner provided by statute.

Deponent further says that the alleged corporation styling themselves the Central City Water Works Company have made application to the mayor and common council of the city of Syracuse for leave to lay pipes and mains in the public streets of Syracuse and to carry on the business of supplying the inhabitants of said city with water and taking whatever means may be necessary for that purpose, and that said mayor and common council are about to grant said application and to allow the said streets of said city to be torn up and new pipes and mains to be laid therein by said city water works company, as deponent is informed and believes

That if said application be granted irreparable damage
242 will result to plaintiff and plaintiff will be thereby deprived of valuable franchises granted to it by defendant and the Legislature of this State and by defendant's contracts and dealings with plaintiff.

That under said acts plaintiff and its predecessors has supplied the inhabitants of said city of Syracuse and the former village of Syracuse with water for nearly fifty years last past, and that, induced by said acts and said contracts and dealings between plaintiff and defendant, plaintiff has expended the sum of $728,000.00 in constructing and improving the plant used in its business and in the purchase of real estate required therefor.

That said plaintiff on account thereof has been obliged to issue bonds to the amount of $200,000 to secure debts contracted for construction, and that if said franchises applied for by said Central City Water Works Company be granted to said last-mentioned company the payment of said bonds will be seriously endangered and plaintiff's stock may become wholly valueless.

Deponent further says that new pipes and mains necessary for such new water works could not be laid in said city without tearing up all the principal streets and leaving the same in such torn-up condition for such a long period of time that the lives and health of the inhabitants of said city will be seriously endangered by digging up its streets and turning over the same in such an extensive manner, and that lasting injury would necessarily result therefrom to the grading and paving of said streets caused by the sinking and depression of a portion thereof.

Deponent further says that no previous application has
243 been made to any court or judge for an injunction order herein, and that plaintiff has no adequate remedy at law against the defendant in the premises, and that the stockholders and bondholders of said plaintiff are heavy tax-payers in said city.

E. W. LEAVENWORTH.

Sworn to before me this 23d day of March, 1885.

D. T. WILLIS,
Commissioner of Deeds, Syracuse, Onondaga County, N. Y.

("Endorsed:") Read on motion for injunction order. George N. Kennedy, J. S. C.

Supreme Court.

SYRACUSE WATER COMPANY
against
THE CITY OF SYRACUSE. } "D."

The above-named plaintiff having applied or being about to apply for an injunction herein restraining the defendant from granting to the Central City Water Works Company or any other persons the right to enter into and upon the streets, lanes, alleys, avenues, and public squares of said city for the purpose of laying down mains or pipes to be used for conducting water into and for the use of said city or from exercising any right within said city on the part of said water works company under their articles of incorporation, filed in Onondaga county clerk's office March 12th, 1885, as therein particularly mentioned, now, therefore, we, Alfred A. Howlett and Horace K. White, of the city of Syracuse, by occupa-
244 tion a banker and capitalist, do hereby jointly and severally undertake, promise, and agree to and with the said defendant that the plaintiff will pay to the defendant enjoined such damages, not exceeding the sum of one thousand dollars, as it may sustain by reason of such injunction if the court shall finally decide that the said plaintiff is not entitled thereto, such damages to be ascertained by a reference or in such manner as the court may direct.

Dated March 23, 1885.

A. A. HOWLETT.
HORACE K. WHITE.

STATE OF NEW YORK, } ss:
County of Onondaga, }

Alfred A. Howlett, one of the subscribers to the above undertaking, being duly sworn, says that he is a resident and freeholder within this State and is worth the sum of two thousand dollars over and above all debts and liabilities which he owes or has incurred, exclusive of property exempt by law from levy and sale under an execution.

A. A. HOWLETT.

Subscribed and sworn to before me this 23d day of March, 1885.
D. T. WILLIS,
Com. of Deeds, Syracuse, Onon. Co., N. Y.

STATE OF NEW YORK, } ss:
County of Onondaga, }

Horace K. White, one of the subscribers to the above undertaking, being duly sworn, says that he is a resident and freeholder
245 within this State and is worth the sum of two thousand dollars over and above all debts or liabilities which he owes or has incurred, exclusive of property exempt by law from levy and sale under an execution.

A. A. HOWLETT.
HORACE K. WHITE.

Subscribed and sworn to before me this 23d day of March, 1885.
D. T. WILLIS,
Com. of Deeds, Syracuse, Onon. Co., N. Y.

STATE OF NEW YORK, } ss:
County of Onondaga, }

On the 23d day of March, in the year one thousand eight hundred and eighty-five, before me, the subscriber, appeared A. A. Howlett and Horace K. White, to me personally known to be the same persons described in and who executed the above undertaking, and they acknowledged that they executed the same.

D. T. WILLIS,
Com. of Deeds, Syracuse, Onondaga County, N. Y.

(Endorsed:) Approved as to form and sufficiency of the sureties this 23d day of March, 1885. George N. Kennedy, J. S. C.

246 Supreme Court.

SYRACUSE WATER COMPANY } "E."
against
THE CITY OF SYRACUSE. }

On reading the complaint in this action, duly verified, also the affidavit of Elias W. Leavenworth that the defendant is about to grant to the Central City Water Works Company rights and privi-

leges in derogation of the rights of the plaintiff, it is ordered that the defendant and its mayor, common council, and their attorneys, counselors, agents, and assistants be, and each and every one of them is, under the penalties by law prescribed, enjoined and restrained until the further order of the court in the premises from granting to the Central City Water Works Company or any other person or persons the right to enter into and upon the streets, lanes, alleys, avenues, and public squares of said city for the purpose of laying down mains or pipes to be used for conducting water into and for the use of said city or from exercising any right within said city on the part of said water works company under their articles of incorporation, filed in Onondaga county clerk's office March 12, 1885. This order is granted upon the following grounds: 1st, that such grant is illegal; 2d, that it would be a violation of an existing contract between the parties; 3d, that it would deprive the plaintiff of valuable franchises granted to it by the statutes of this State and guaranteed to it by defendant; 4th, that the granting of such right would irreparably damage the plaintiff; 5th, that the exercise
247 of such right would endanger the public health of said city.

Let the defendant show cause before me, Justice Kennedy, at the court-house, in Syracuse, on the 28th day of March inst., at 10 a. m., why this order be not continued till the final judgment of the court herein.

Dated the 23d day of March, 1885.

GEORGE N. KENNEDY,
Justice Supreme Court.

And the plaintiff further says that on said 23d day of March, 1885, and before said resolution was acted upon said papers were duly served on city defendant, as provided by statute and by the rules and practice of this court; that such service was made on city defendant by handing to and leaving with Thomas Ryan, mayor of said city, a copy of the same, he being at the same time shown the original injunction order therein contained, and at the same time of such service each alderman and every one of them was told its nature and import, as plaintiff also is informed and verily believes; that, in defiance of said injunction order and in utter and contemptuous disregard of the same, said common council at once and forthwith, in regular meeting convened, voted upon and passed said resolution, and the mayor at once approved and signed the same.

That said resolution, important as it was and hostile and injurious to this plaintiff, was not for a moment considered or discussed by said common council; that this plaintiff attended such meeting with counsel for the purpose of being heard in opposition to the resolution; that on respectfully addressing the mayor and
248 after the resolution was read the mayor ordered the janitor to make the counsel sit down; that on respectfully addressing him the second time, after the resolution was read, the mayor angrily ordered the janitor to put the counsel out, when the counsel and officers of the company left the room; that after the resolution was read it was accepted by the common council and adopted and

approved by the mayor in the fewest possible moments, and that this plaintiff has never been permitted to be heard on the resolution so passed on the said 23d of March or to interpose any objection thereto or restrain the same by order.

That said resolution and the action of said common council thereon and the approval of its passage by the mayor of said city is a matter of record in the clerk's office of said city, to which the plaintiff upon trial of this cause will pray leave to refer and produce and to make competent proof of the same; and, upon information and belief, plaintiff avers that the passage of said resolution and the granting of the powers and privileges therein contained were brought about by means of an illicit, fraudulent, and corrupt combination on the part of those or some of those persons who acted for said defendants, and that the passage of said resolution and the granting of the powers and privileges therein contained were the result of a conspiracy between these defendants concocted and carried out by fraud, bribery, and corruption for the purpose of annoying and harassing this plaintiff and extorting from it large sums of money.

Wherefore the plaintiff demands judgment that the defendants and each of them and their officers, agents, and attorneys and
249 all persons acting for and in their behalf be restrained from exercising any right, power, or privilege of any name and nature granted or pretended to be granted to the defendant, The Central City Water Works Company, by the resolution passed by the common council of said city March 23, 1885, and that the defendant, The Central City Water Works Company, be restrained from digging up the streets of said city and from laying any pipes, mains, or hydrants in and upon or along any of the streets of said city, and that the defendant, The City of Syracuse, be restrained from allowing or permitting the defendant, The Central City Water Works Company, from digging up said streets and from laying any pipes, mains, or hydrants in and upon the streets of said city, and from exercising any of the powers and privileges contained in said resolution so as aforesaid improvidently, illegally, and unlawfully granted, and that the defendant, The City of Syracuse, be restrained and enjoined from passing any resolution or ordinance or taking any step or proceedings giving or granting to said Central City Water Works Company or any other person the right, power, or privilege of laying pipes or mains in said city for the purpose of providing or furnishing said city with water.

2. That the rights and privileges of the plaintiff in the premises may be determined and adjudicated upon and settled by this court.

3. For such other, further, or different rule or order or relief as the court may deem fit and equitable in the premises, with costs, and that a temporary injunction may be issued during the pendency of this action to restrain the defendants herein from taking any
250 of the steps or performing any of the acts aforesaid.

FORBES, BROWN & TRACY,
Plaintiff's Attorneys, Stevens Block, Syracuse, N. Y.

STATE OF NEW YORK, } ss:
Onondaga County, }

E. W. Leavenworth, being duly sworn, says that he is now and for a long time has been the president of the plaintiff, and he therefore makes this affidavit; that he has heard read the foregoing complaint and knows its contents, and the same is true of his own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. Deponent further says that the reason why this verification is not made by the plaintiff is that it is a corporation; that deponent is an officer of the same, to wit, president; that his knowledge is derived from a personal perusal of the statutes and other papers therein referred to and from being cognizant of all the material allegations therein contained, and the grounds of his belief are such papers and statutes.

E. W. LEAVENWORTH.

Sworn to before me May 18, 1885.

GEORGE BARROW,
Notary Public, Onondaga County.

251 Supreme Court.

SYRACUSE WATER COMPANY
against
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY.

ONONDAGA COUNTY, ss:

ELIAS LEAVENWORTH, being duly sworn, said that he is the president — said plaintiff and has been for many years past; that he is familiar with the several acts of the Legislature of the State of New York referred to in the complaint herein, and with the provisions of the charter of the city of Syracuse, and with the franchises and rights granted thereby to the plaintiff, and that the allegations contained in said complaint in regard thereto are true.

Deponent further says that by said several acts and the dealings and contracts from time to time between plaintiff and defendant thereunder that said plaintiff is entitled to the exclusive privilege of carrying on the water business in the city of Syracuse and supplying the inhabitants thereof with water until the rights of plaintiff in said business are taken and assumed by the defendant, said City of Syracuse, and the plaintiff paid therefor in the manner provided by statute.

Deponent further says that the said defendant, the alleged corporation styling themselves the Central City Water Works Company, have made unauthorized and illegal application to the mayor and common council of the city of Syracuse for leave to lay pipes
252 and mains in the public streets of Syracuse and to carry on the business of supplying the inhabitants of said city with water and taking whatever means may be necessary for that purpose,

and that said mayor and common council improperly and illegally granted said application and are about to allow the said streets of said city to be torn up and new pipes and mains to be laid therein by said city water works company.

That by reason thereof irreparable damage will result to plaintiff and plaintiff will be thereby deprived of valuable franchises granted to it by defendant, The City of Syracuse, and the Legislature of the State, and by defendant the city's contract and dealings with plaintiff, and for which loss and damage plaintiff has no adequate remedy at law.

That under said acts plaintiff and its predecessors has supplied said city of Syracuse and the former village of Syracuse with water nearly fifty years last past, and has in all respects fully performed the obligations imposed upon it by such grants and franchises, and by the contracts made between it and said city of Syracuse, and that, induced by said acts and said contracts and dealings between plaintiff and defendant, plaintiff has expended the sum of $728,000 in constructing the plant used in its business and in the purchase of real estate required therefor.

That said plaintiff on account thereof has been obliged to issue bonds to the amount of $200,000 to secure debts contracted for construction and other actual expenses thereon, and that — said franchises applied for by said Central City water works and
253 granted to said last-mentioned company the payment of said bonds will be seriously endangered and plaintiff's stock may be wholly valueless.

Deponent further says that new pipes and mains necessary for such new water works could not be laid in said city without tearing up all the principal streets and leaving the same in such torn-up condition for such a long period of time that the lives and health of the inhabitants of said city will be seriously endangered by digging up its streets and turning over the same in such an extensive manner, and that lasting injury would necessarily result therefrom to the grading and paving of said streets, caused by the sinking and depression of a portion thereof.

Deponent further says that the defendant, The Central City Water Works Company, claims to be a domestic corporation organized for the purpose of supplying water to the city of Syracuse; also that some time prior to March 23, 1885, the defendant, The Central City Water Works Company, made application to defendant, The City of Syracuse, for leave to lay pipes and mains, &c., in the streets of said city for the purpose of supplying said city with water, and that a resolution was prepared and was presented to the common council of said city for its approval and adoption authorizing and empowering said Central City Water Works Company to build, construct, maintain, own, and operate water works in said city subject to certain limitations, covenants, and agreements therein contained; that said resolution was accepted by said city, its mayor and common council, for consideration and adoption; that subsequent to that time and at a regular meeting of the common council of said
254 city to be held on the 23d day of March, 1885, said resolution

was to be taken up for consideration and final action, as deponent then understood; that deponent, as president of the plaintiff, knowing that the passage of said resolution would visit upon the plaintiff irreparable damage and would, if acted upon, greatly depreciate, if not wholly destroy, the plaintiff's rights and property, directed a suit to be commenced to restrain defendant, its mayor and common council, from passing said resolution; that such action was thereupon at once commenced upon a summons and complaint and other papers, as in the complaint set forth, and a preliminary injunction was obtained, and the papers were at once and before action was taken on said resolution served on defendant, its mayor and common council, as in the complaint herein set forth, which service, as deponent is informed by plaintiff's counsel, Mr. G. A. Forbes, and verily believes, was and is valid and binding; that, in defiance of such injunction and in utter disregard of the same, said common council at once and forthwith, in regular meeting convened, voted upon and passed said resolution, and the mayor at once approved and signed it; that said resolution and the action of said common council are matters of record in the clerk's office of said city of Syracuse. Deponent further avers, upon information and belief, that said resolution was passed by said common council and approved by said mayor by means of an illicit combination, concocted in fraud and carried through by bribery, corruption, and fraud and for the purpose of extorting money from this plaintiff.

Deponent further says that since the passage of said
255 resolution and in defiance and disregard of said injunction said common council has passed unanimously two resolutions, one dated March 30, 1885, requesting the senator and assemblymen representing in the Legislature of this State the people of the city of Syracuse and county of Onondaga to use their influence to secure as speedily as possible the passage of a bill enabling the defendant, The Central City Water Works Company, to procure its supply of water from either Skaneateles, Oneida, or Cazenovia Lakes, and another resolution, dated April 6, 1885, approving the bond required to be given by said Central City Water Works Company by the resolution granting said company the right to furnish water to said city; that said resolutions are matters of record in the clerk's office of said city, as appears by duly certified copies now in the possession of plaintiff's attorneys.

Deponent further says that the stockholders and bondholders of said plaintiff are heavy tax-payers in said city.

Defendant further says that no previous application has been made to any court or judge for an injunction order herein.

E. W. LEAVENWORTH.

Sworn to before me May 18, 1885.

GEORGE BARROW,
Notary Public, Onondaga Co.

May 19, 1885.—Read on motion for injunction order.

GEO. N. KENNEDY, *J. S. C.*

256 Supreme Court, Onondaga County.

SYRACUSE WATER COMPANY
against
THE CITY OF SYRACUSE and CENTRAL CITY WATER WORKS COMPANY.

Upon reading and filing the complaint in this action, duly verified, and also the affidavit of E. W. Leavenworth, by which it appears that the defendant, The City of Syracuse, has unlawfully and illegally granted to the defendant, The Central City Water Works Company, rights and privileges in derogation of the rights of the plaintiff, it is ordered that the defendants, each, every, and both of them, and their attorneys, counsellors, agents, and assistants, be, and each of them is, under the penalties by law prescribed, enjoined and restrained until the further order of this court in the premises from exercising any right, power, or privilege of any name or nature granted, claimed, alleged, or pretended to be granted to the defendant, The Central City Water Works Company, by the resolution passed by the common council of said city March 23, 1885, or otherwise; and the defendant, The Central City Water Works Company, is hereby enjoined and restrained from digging up the streets of said city and from laying pipes, mains, or hydrants in and upon or along any of the streets, parks, avenues, or lanes of said city, and the defendant, The City of Syracuse, is hereby enjoined and restrained from allowing or permitting the defendant, The Central City Water Works
Company, to dig up said streets, lanes, parks, or avenues or to lay
257 any pipes, mains, or hydrants or other appliances for furnishing water in said city, in and upon the streets, lanes, parks or avenues of said city, to be used for conducting water into and for the use of said city or otherwise, or otherwise to exercise any of the claimed or alleged powers or privileges contained in said resolution so as aforesaid or otherwise granted; and the defendant, The City of Syracuse, its mayor and common council, officers and attorneys or agents, be, and they are hereby, restrained and enjoined from passing any resolution or ordinance or taking any step or proceeding whatever giving or granting to said Central City Water Works Company or any other person or persons the right, power, or privilege of laying any pipes, mains, or hydrants in or within said city for the purpose of furnishing said city or any person or persons with water, thereunder or otherwise, or in any manner or form to interfere further in the premises with the plaintiff's powers, rights, franchises, or privileges until the further order of this court.

This order is granted upon the following grounds: 1st, that such grant is illegal; 2d, that it is and would be a violation of an existing contract between plaintiff and the city of Syracuse; 3d, that it would deprive the plaintiff of valuable franchises granted it by the statutes of this State and guaranteed to it by defendant; 4th, that the granting of such right would and will irreparably damage the plaintiff, and for which damage plaintiff has and will have no adequate remedy at law; 5th, that the passing of the resolution by the common council of said city granting such rights to the defend-

ant, The Central City Water Works Company, was and is il-
258 legal, unauthorized, and in direct violation of an injunction order issued by a justice of this court; 6th, that the exercise of such rights would endanger the public health of said city.

Let the defendants show cause before me, at my chambers, in the court-house, in Syracuse, Onondaga county, N. Y., on the 29th day of May, 1885, at 10 o'clock, a. m. of that day, why this order be not continued till the final judgment of the court herein.

GEO. N. KENNEDY,
Jus. Sup. Court.

Dated Syracuse, May 17, 1885.

Supreme Court.

THE SYRACUSE WATER COMPANY
against
THE CENTRAL CITY WATER WORKS COMPANY, Impleaded with THE CITY OF SYRACUSE.

The above-named defendant, answering the complaint herein, admits that the plaintiff is a domestic corporation, organized and incorporated under the laws of the State of New York, and doing business at the city of Syracuse under the name of "The Syracuse Water Company;" that the defendant is a corporation organized as in the complaint mentioned, and that the mayor and aldermen of the city of Syracuse are municipal officers thereof, and that the various acts referred to at folios 5 and 6 of the complaint were passed by the Legislature of the State of New York.

259 Further answering, the defendant denies each and every other allegation in the complaint contained.

II.

For a second and further answer to the complaint the defendant alleges, on information and belief, that by chapter 176 of the laws of 1821 the freeholders and inhabitants of the village of Syracuse were authorized to take a supply of fresh water for the use of said village from any springs on the land of the people of the State of New York lying eastward of said village, and to carry the same in an underground aqueduct across the land of said people to said village and to enter on the same, to dig ditches for the laying of said aqueducts, and to repair the same from time to time, when necessary, with as little injury to said lands as might be; that said freeholders and inhabitants of said village were authorized to elect three trustees, who were empowered to transact all business in relation to the rights thereby granted to the inhabitants of said village to bring in the water, regulate the manner of using it, fix the sum to be obtained annually by those using the same, and to sue for all injuries to the works erected under said act. Provision was also made for the election of successors to said trustees annually. Said trustees were required to select the springs from which they intended to take such water and to cause a map to be made of the same, with the route indicated thereon by which they intended to carry the same to said

village, which map was to be filed in the office of the surveyor general of the State.

260 It was further provided that the Legislature should have the power at all times to modify, amend, or repeal said act; that thereafter, by chap. 124 of the laws of 1825 it was provided that all the rights, property, and powers of the trustees of the Syracuse water works, above referred to, should be vested in the village of Syracuse, which was incorporated by the said act, subject to the obligations and duties imposed upon said trustees, which duties were thereafter to be exercised by the trustees of the village of Syracuse; that thereafter, by chap. 236 of the laws of 1829, it was provided that the trustees of the village of Syracuse should have the power to convey to one Oliver Teall, his heirs and assigns, all the rights, property, and powers of the trustees of the Syracuse water works as vested in said village for the term of twenty years; that subsequently, by chap. 151 of the laws of 1834, the trustees of said village of Syracuse were empowered to convey said Oliver Teall, his heirs or assigns, all the rights, property, and powers of the trustees of the Syracuse water works vested in said village for the term of thirty-five years from April 22, 1834, and the said Teall was authorized to exercise the privileges granted by chap. 176 of the laws of 1821, and was required to distribute water to such places as the trustees might direct.

It was further provided that trustees of said village should have the power at the expiration of said thirty-five years to reinvest themselves and take possession of said water works and all appurtenances thereto belonging by paying for said water works and appurtenances at the necessary cost of erecting the same, deducting the decrease in their value by reason of their waste and decay by time and

261 use, and providing further that in case of a failure to agree upon such value the same was to be determined by appraisers to be appointed by the supreme court; that under and by virtue of the provisions of the said act said Teall entered upon and operated the water works theretofore belonging to the village of Syracuse, and by it acquired from the trustees of the Syracuse water works, said water being obtained from springs lying east of the village of Syracuse.

That said Teall continued to operate said works, making a large profit therefrom, until 1849, when he associated with himself a number of other persons, who together, by chap. 224 of the laws of 1849, became incorporated as the Syracuse City Water Works Company; that said corporation was authorized to acquire real estate and to take water from such springs, ponds, fountains, or streams which might be approved of by the common council of the city of Syracuse, and to divert and convey the same to the said city, and to lay pipes, conduits, aqueducts, wells, reservoirs, and other works necessary or proper for such purpose. They were also authorized, subject to such regulations as the common council of the city of Syracuse might prescribe, to lay pipes, conduits, and aqueducts in the streets, lanes, and public squares of said city, being required, however, to leave the same in the same condition, as nearly as might be, as they were

before such entry. The said company was also required, whenever requested, to furnish water to the common council of the city of Syracuse for extinguishing fires and other purposes upon such terms as might be agreed upon between the said common council
262 and said company, and, in case of a failure to agree upon the compensation for the water furnished or by said city requested to be furnished, commissioners were to be appointed by the supreme court to prescribe the terms upon which the water should be furnished.

It was also provided that nothing in said act contained should impair or interfere with the rights and privileges acquired by the city of Syracuse under chap. 176 of the laws of 1821, and it was provided that the common council of said city of Syracuse should have the right at any time after the expiration of twenty years to resume all the property, rights, powers, and privileges of the said Syracuse City Water Works Company on paying to the said company the amount of the capital stock actually paid in and expended in said works, with fifteen per cent. annually thereon, deducting therefrom the actual profits annually received by said company; that thereafter the plaintiff succeeded to the rights of said Syracuse Water Company and legislative authority was obtained to increase the nominal amount of the capital stock of said company to the sum of $1,000,000.

That on the 8th day of November, 1847, upon the application of said Oliver Teall, the trustees of the then village of Syracuse passed the following resolution:

"Resolved, That Oliver Teall and any other person who do or may hereafter represent the Syracuse Water Works Company, their representatives and assigns, may hereafter introduce into the village water from any spring or springs which they or any of them may select, subject to the usual conditions of not permitting the
263 streets to be injured by their operations nor unnecessarily incommoding the public; and provided also that the water introduced shall be better than that now introduced."

That thereafter, on July 5th, 1848, upon the application of said Teall, the following resolution was adopted by the common council of said city of Syracuse:

Resolved by the common council of the city of Syracuse, That Oliver Teall or any other person who do or may represent the Syracuse Water Works Company, their representatives and assigns, may hereafter introduce into and distribute through said city water from the Furnace brook, so called, subject to the conditions mentioned in resolutions passed by the trustees of the village of Syracuse on the 8th day of November, 1847, in relation to the streets, and that the said Teall and his representatives aforesaid be at liberty to charge and receive the same compensation for the use of said water as he is authorized to charge for water now introduced from other sources.

That after the passage of chapter 224 of the laws of 1849, upon the application of said Syracuse City Water Works Company, the said common council adopted the following resolution:

"Whereas the Syracuse City Water Works Company proposes to

bring in and distribute through said city for use the water of Furnace brook, so called, in the town of Onondaga, in pursuance of the act incorporating said company: Therefore

"Resolved by the common council of said city, That we approve of the quality of said water and of the same being brought in by the said company aforesaid.

264 "Resolved by the common council of the city of Syracuse, That the Syracuse City Water Works Company be required in all cases when they shall remove any pavement in said city for the purpose of constructing their water works that the same shall be done and again relaid by an experienced and skillful man in constructing pavements, and that all such excavations and relaying the same shall be so done as to leave the street as near as may be in the same permanent and finished condition as it was before any such excavation, and that the said company so construct their said water works through said streets as to prevent all leaks in said streets."

That the foregoing are all the legislative and municipal grants and authority, powers, and franchises given to or acquired by the plaintiff or its predecessors; that the said Oliver Teall and the organizers of said company commenced the construction of said works with an original capital, which did not exceed the sum of $10,000, and all moneys that have since been invested in said works by any of the stockholders thereof has consisted entirely of the earnings of said company out of the city of Syracuse and its inhabitants, so that the original investment of $10,000 has become developed into a capital stock of more than $700,000, upon which during a number of years past said company has paid annual cash dividends of six per cent., aggregating many hundreds of thousands of dollars; that said company and its predecessors, taking advantage of the fact that they had no competitors in supplying water to the city of Syracuse, have during the past forty years in every manner taken advantage

265 of their position and of the necessities of the said city and its inhabitants; the supply of water furnished by them has been inadequate; they have never supplied with water the elevated portions of the city, upon which are erected some of the most valuable residences and buildings in said city, and which have always been without adequate protection against fire, and which the plaintiff and its predecessors have always been unable to supply and provide for.

The said plaintiff and its predecessors have not only failed in providing a sufficient quantity of water, but the quality of the water furnished has been unwholesome, impure, and oftentimes disgusting. It has been tested chemically and otherwise, and has been condemned as unfit for use. At the present session of the Legislature a report has been submitted by the physician of the State board of health which severely criticises the water supply of the plaintiff and attacks it as being deleterious to the public health. It is so hard that it cannot be used for domestic purposes, and is impregnated with mineral substance to such an extent as to make it in every way undesirable. During the past thirty years complaints by the public have been very numerous and continuous. Committees have

been frequently appointed to investigate the evil, and protests have been made so frequently as to become unheeded by the plaintiff and its predecessors. Not only has the water supply of the plaintiff been insufficient in quantity and objectionable in quality, but the said plaintiff has year after year become more and more inordinate in its demands upon the city of Syracuse and the public. In 1851 the said city paid to the plaintiff for all the water furnished to
266 it by said plaintiff for all municipal purposes the sum of $2,000, and since that time the amount paid has gradually increased, so that during the past three years the defendant has been compelled to pay the sum of $26,000 per annum for the water furnished to it, and during the past year, the contract between the plaintiff and the defendant having expired, the former has demanded that it be paid the sum of $40,000 per annum for the use of said water, so insufficient in quantity, so inadequate for the wants of said defendants, and so unwholesome in its quality; that not only has the said company been guilty of such exactions from the defendant, but its extortions from private consumers have been in a like proportion, so that in many cases during the past few years the rates have increased more than fivefold.

The defendant further alleges that during all this time, for the purpose of preventing the defendant from resuming the control and ownership of the rights, powers, privileges, and property of said company, the said company has so kept its books of account that all expenses for repairs of every name and nature have been charged upon an account known as the construction account, upon which interest has been compounded year after year in such a manner and upon such a plan as to make it appear that the cost of the said works has been greatly out of proportion to the actual cost of construction, and upon the basis of such fraudulent book-keeping said water company has "watered," or, in other words, increased, its capital stock to a sum nominally in excess of $700,000, and said Syracuse Water Company now claims and insists that the defendant shall not
267 have the right to resume the property of said Syracuse Water Company unless it pays to said company upon said "watered" stock, amounting nominally to over $700,000, the amount of said "watered" stock, with fifteen per cent. annually thereon, deducting therefrom the actual profits annually received by said company. This at the present time amounts to a sum exceeding $2,000,000, and if paid by the city would secure to it water works in many respects old and dilapidated, in every respect objectionable, and utterly inadequate for the wants of a growing city.

The defendant further alleges that all of the matters above alleged have for many years been well known to the plaintiff, but, shielding itself behind its hateful monopoly, it has refused to accede to any of the reasonable demands made by the defendant and its citizens for a correction of these abuses. Aware of these facts a number of gentlemen incorporated themselves under the laws of the State of New York, made in that behalf, under the name of the Central City Water Works Company for the purpose of accumulating, storing, conducting, selling, furnishing, and supplying water for domestic,

manufacturing, municipal, and agricultural purposes to the city of Syracuse and its inhabitants and to adjacent villages, and it being necessary for said company, in order to construct its works and to enable it to supply the defendant and its inhabitants with pure and wholesome water, that said company should secure the right of laying its mains, pipes, and conduits in the streets of said city, and to construct aqueducts and other structures, and to make excavations in the streets of said city, for the purpose of acquiring
268 such right said company presented a petition to the common council of the city of Syracuse praying that it be granted the privilege of building, constructing, and operating water works in the city of Syracuse and to lay down pipes and water mains through the streets, avenues, and alleys of said city; that a resolution was thereafter introduced in said common council providing for the making of such grant and affixing the conditions which it was deemed prudent to require for the protection of the said city of Syracuse and its inhabitants; that a copy of said resolution is hereto annexed, marked "A;" that the said defendant and its common council and its various officers carefully considered the said resolution and proposed to take such action there- only as would best subserve the welfare of the city of Syracuse and its inhabitants, and did not threaten to take away any right, grant, privilege, or franchise owned or possessed by the plaintiff; that the common council of said city, being by its charter of said city invested with the legislative power conferred upon the defendant, intended to exercise said power prudently and in good faith and with no purpose or intent to infringe upon any of the legal rights of the plaintiff or of any other person; that the granting of the privileges specified in said resolution would not deprive the plaintiff of any of its legal rights, and if the construction of new water works would have the tendency of decreasing the value of the plaintiff's property such decrease would only be occasioned by the wrongful acts, misdoings, and extortions theretofore practised by the plaintiff, and would be the nat-
269 ural consequences resulting from honest and healthy competition, which would enure to the benefit of the general public.

The defendant further alleges that the public health of the inhabitants of the city of Syracuse would not be endangered or impaired by the digging up of the streets of said city for the purpose of laying down mains or hydrants, but, on the contrary, a more abundant water supply would aid greatly in flushing the sewers of said city, and thereby be a benefit to the public health.

Further answering, the defendant alleges that the said resolution, hereto annexed, adequately provides for the restoration of the streets of the city of Syracuse to their former condition of usefulness, and the said Central City Water Works Company has tendered to the defendant a bond in the penal sum of $50,000, conforming with the third section of said resolution, and executed by sureties justifying in the sum of $310,000; that notwithstanding the fact that the plaintiff now takes so great an interest in the public health and in the condition of the streets of the city of Syracuse, it has been a notorious fact that the said plaintiff, although required to restore

all streets wherein it makes excavations to their former condition of usefulness, *it* has failed to do so, and has greatly disfigured the streets of said city, and caused to the defendant great and lasting damage.

III.

For a third and further answer to the complaint herein and the second count thereof the defendant admits the incorporation of the plaintiff; defendant, The City of Syracuse, and the
270 defendant, The Central City Water Works Company, as in the complaint alleged; that prior to the 23d day of March, 1885, said Central Water Works Company made an application to the city of Syracuse, its mayor and common council, for leave to lay pipes and mains in the streets of said city and to carry on the business of supplying the said city with water, and that a resolution was prepared containing various conditions, agreements, and stipulations which were to be accepted by the said defendant, the said Central City Water Works Company, and which resolution authorized and empowered said company to build, construct, maintain, and own water works in the city of Syracuse, and which resolution was presented to said city of Syracuse and received for consideration and adoption; that the resolution so referred to is the resolution a copy of which is hereto annexed and marked "Exhibit A."

The defendant also admits that at the regular meeting of the common council of said city, held on the 23d day of March, 1885, said resolution was taken up for consideration and final action; that on said day said plaintiff commenced an action in the supreme court of the State of New York for the purpose of restraining the city of Syracuse and its mayor and common council from passing said resolution and from granting to the defendant, The Central City Water Works Company, or any other person or persons any rights, power, privileges, or franchises to lay pipes, mains, or hydrants in said city, and that the papers referred to in the complaint and marked respectively A, B, C, D, and E were prepared by plaintiff's attorneys, and the preliminary injunction and
271 order to show cause, which is marked "E," was on said day obtained by the plaintiff.

Further answering, the defendant denies that said papers were duly or legally served on the city of Syracuse on said 23d day of March, 1885, before said resolution was acted upon, and also denies that the mayor or aldermen of said city of Syracuse understood or knew or were informed of the nature of the papers claimed to have been served upon them on behalf of the plaintiff on said day before they had voted upon the said resolution.

Said defendant also denies that the said common council, in defiance of said injunction order or in disregard or in contempt of the same, voted upon or passed said resolution, or that the mayor of the said city of Syracuse approved of or signed the same in defiance of said injunction order or in disregard or contempt of the same.

Said defendant also denies that said resolution was not considered

or discussed by said common council, but alleges that the said resolution was considered and discussed by said common council for several weeks, and they permitted the plaintiff and its attorneys to discuss the same at a meeting especially held for that purpose, and that said resolution was not acted upon by said common council and approved of by the mayor until the same had been carefully deliberated and considered.

The defendant also denies that the plaintiff was never permitted to be heard on said resolution or to interpose an objection thereto or to restrain the same by order, or that the plaintiff or its attorneys were prevented from addressing the mayor or common
272 council at the proper time when addressed in a proper manner.

The defendant admits that the said resolution was, at the meeting held by the common council of the city of Syracuse upon the 23d day of March, 1885, adopted by said common council and approved by the mayor of the city of Syracuse, and refers to Exhibit A, hereto annexed, as an accurate copy of the resolution so adopted and approved.

The defendant further denies emphatically and solemnly that the passage of said resolution and the granting of the powers and privileges therein contained were brought about by means of any illicit, fraudulent, or corrupt combination on the part of the defendant, The City of Syracuse, or any of the officers of the said Central City Water Works Company or on the part of any person or persons acting in behalf of either of said defendants, or that the passage of said resolution or the granting of the powers and privileges therein contained were the result of a conspiracy between the defendant, The City of Syracuse, and the defendant, The Central City Water Works Company, or any person or persons acting in behalf of either or both, concocted or carried out by fraud, bribery, or corruption, for the purpose of annoying or harassing the plaintiff, or for extorting from it any money whatsoever, or for any other unlawful purpose; but allege that the said Central City Water Works Company, in presenting to the common council of the city of Syracuse said resolution and application for a grant, as therein specified, and the city of Syracuse and its mayor and common council in acting
273 upon and adopting and approving of said resolution and the grant therein contained, acted throughout in entire good faith and with no intent to injure, annoy, or harass the plaintiff or to extort from it any money, but for the sole purpose of procuring for the city of Syracuse an abundant and sufficient supply of good and wholesome water.

Further answering, the defendant repeats all of the allegations contained in the second count of this answer and incorporates the same as a part of this count of the defendant's answer.

That subsequent to the 23d day of March, 1885, the plaintiff, claiming that the passage of said resolution as above described was a contempt of court in that it was passed and approved of in willful disregard of the injunction order set forth in the complaint herein and marked "E," instituted proceedings in the supreme court against

the mayor and aldermen of the city of Syracuse for the purpose of punishing them for such contempt and basing such application upon the allegations contained in the second count of this answer; that such proceedings were thereafter had in said contempt matter that on the 2d day of June, 1885, a decision was rendered by Hon. John C. Churchill, a justice of the supreme court, before whom the same was argued at a special term of the supreme court, denying the plaintiff's motion to punish the mayor and aldermen for contempt on the ground that they had not adopted and approved of said resolution in defiance of said injunction order or in disregard or in contempt of the same.

Wherefore the defendant demands judgment for a dismissal
274 of the complaint herein with costs, and that judgment be rendered to the effect that said resolution, hereto annexed and marked "Exhibit A," was legally adopted and approved by the proper authorities of the city of Syracuse, and that the rights granted thereunder are valid and capable of enjoyment by the defendant, The Central City Water Works Company, and that the plaintiff has not the exclusive right, power, grant, privilege, or franchise of building, erecting, and maintaining water works in the city of Syracuse, as claimed by said plaintiff.

LOUIS MARSHALL,
Attorney for the Central City Water Works Company,
No. 2 Granger Block, Syracuse N. Y.

STATE OF NEW YORK, } ss:
Onondaga County, }

Frank B. Merrill, being duly sworn, says that he is the president of the defendant, The Central City Water Works Company; that the said defendant is a domestic corporation, duly organized and incorporated under and by virtue of the laws of the State of New York.

Deponent further says that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

He further says that he makes this verification because, as
275 the president of said Central City Water Works Company, he has personal knowledge of all the matters which are not therein stated on information and belief, and as to such matters as are stated on information and belief the grounds of his belief and the sources of his information are communications made to him by various officers of the city of Syracuse and the information derived from the records of said city.

FRANK B. MERRILL.

Subscribed and sworn to before me this 11th day of June, 1885.
GEORGE McGOWAN,
Justice of the Peace.

Schedule A annexed, printed above, Exhibit 1, page 88.

Supreme Court.

THE SYRACUSE WATER *County*
against
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY.

The issues of this action having been brought on for trial at a regular adjourned special term of the supreme court held at the city of Syracuse, N. Y., on the 30th day of June, 1885, and the respective parties having submitted their proofs and allegations herein, after duly considering the same and the arguments of the respective counsel, I do hereby make the following findings of fact and conclusions of law:

276 *Findings of Fact.*

1st. The summons, complaint, and injunction order granted by the Hon. George N. Kennedy in this action were duly served on Thomas Ryan, the mayor of the city of Syracuse, and upon the Central City Water Works Company personally on the — day of ——, 1885. The defendants appeared and answered the complaint, and the issues in the action were in that manner joined. Upon an order to show cause, the defendants appearing in the action before Hon. George N. Kennedy, the injunction herein was duly continued until the hearing and determination of this action. The action was duly brought on for trial at a regular adjourned special term of the court held at the city of Syracuse on the 30th day of June, 1885, and thereafter submitted on argument for the decision of the court.

2nd. By chapter *of* 176 of the laws of 1821, entitled "An act to supply the village of Syracuse with wholesome water," passed March 27th, 1821, the Legislature of the State of New York authorized the freeholders and inhabitants of the then unincorporated village of Syracuse to take a sufficient supply of fresh water for the use of said village from any springs on the lands of the people of the State of New York in the town of Salina lying eastward of the said village, and to carry the same in an underground aqueduct across the lands of the people of the village, and at all times to enter upon the same; to dig ditches for the laying of the said aqueducts, and to repair the same when necessary with as little injury *as* the said lands as may be. Provision was also made for the election of three
277 trustees by the freeholders and inhabitants of the village on the first Monday of May in each year, whose duty it was to transact all business in relation to the rights granted by said act to the inhabitants of the village, to bring in the water, and to regulate the use thereof and the charges for the same, as more fully appears by said statute, which is hereby made a part of the finding.

3rd. Under the authority thus conferred the inhabitants of the said village elected trustees to select the springs from which they intended to take said water, and which were situated easterly of the then village and in the eastern part of the present city of Syracuse, and said trustees proceeded to supply the inhabitants of the said

village with water until 1825, when, by chapter 124 of the laws of that year, the village of Syracuse was incorporated, and by the terms of the charter all the rights, property, and powers of the trustees of the Syracuse water works were vested in the village corporation, subject to the obligations of such trustees, and it was provided that thereafter the duties enjoined on said trustees under the act of March 27th, 1821, were to be exercised by the trustees of the village under the provisions of this act. The trustees of the village exercised the duties imposed upon them, and furnished water for the village and its inhabitants from said springs, lying easterly of the village, until the year 1884.

4th. Thereafter, by chap. 151 of the laws of 1834, the trustees of the village of Syracuse were empowered to convey to one Oliver Teall, his heirs or assigns, all the rights, property, and powers
278 of the trustees of the Syracuse Water Works Company as were vested in the village by its charter for a term of thirty-five years from and after the passage of said act, and the said Teall, his heirs or assigns, were declared to be thereafter possessed of all the powers, rights, and privileges which were granted in and by the act passed March 27, 1821, and of all the powers of the village with reference to that subject, and the said Teall, his heirs, executors, administrators, and assigns, were authorized to exercise in his or their own name or names all the privileges granted by said act, he being required to distribute the water to such places as the trustees might direct, but not being required to account for the money received by him from said works.

The act also provided that the said Teall, his heirs or assigns, were authorized for the use of the water, and in case the said Teall, after receiving the conveyance of the said rights, powers, and privileges, should neglect to exercise them, the trustees of the village were given the right, after two years' notice, to resume all the rights, powers, and privileges thereby granted. It was further provided that the trustees should have the power, at the expiration of thirty-five years, to reinvest themselves and take possession of said water works and appurtenances thereunto belonging, by paying at the time of the taking possession thereof, estimating the water works and their appurtenances at the necessary cost of erecting such works, deducting the decrease in their value by reason of their waste and decay by time and use, and that, in case said trustees and said Teall or their representatives could not agree upon such value, the
279 same should be ascertained by three disinterested appraisers to be appointed by the supreme court of the State at the instance of either party, as more fully appears by said statute, which is hereby made a part of the finding.

5th. On June 8, 1841, under the authority of said act of April 22, 1834, and of a resolution passed by the board of trustees of the village of Syracuse, the trustees of said village duly conveyed to said Oliver Teall, his heirs or assigns, all the rights, property, and powers of the trustees of the Syracuse Water Company as were vested in such village for a term of thirty-five years from April 22, 1834, with the powers, rights, and privileges of said act, and subject

to the conditions and limitations therein described, and said Teall thereafter exercised the powers and privileges granted to him by said conveyance and conveyed a portion of his interest in said property to one said Ira Seymour, with whom he owned the same in common, the said Teall owning five-sixths and the said Seymour one-sixth of said property.

6th. That thereafter and on December 14th, 1847, the village of Syracuse was incorporated as a city by chapter 475 of the Laws of 1847 and was empowered to make, establish, publish, and modify, amend, and repeal ordinances, rules, regulations, and by-laws for various purposes, among others to exercise all the powers conferred upon them by the charter of the city in relation to highways, the prevention of fires, the levying of taxes, the supplying the village with good and wholesome water, and other subjects of municipal regulation. By said act it was also provided that the same rights,
duties, obligations, and requirements as were held by the
280 trustees of the village of Syracuse at the time of the passage
of said act of incorporation or as were imposed upon them in re-tion to Oliver Teall as to supplying the city of Syracuse with pure and wholesome water should be conferred upon said common council, as appears more fully by said statute. which is hereby made a part of this finding.

7th. On April 8th, 1849, the Legislature of the State of New York, by chapter 224 of the Laws of 1849, incorporated the Syracuse Water Works Company, authorizing it to have a capital stock of sixty thousand dollars, providing for the election of directors and officers, specifying the manner in which the business of the corporation should be performed, authorizing the said corporation, for the purpose of supplying the city of Syracuse with pure and wholesome water, to purchase, take, and hold any real estate necessary for the purpose, and, by their directors, agents, servants, or other persons employed, to enter upon the lands of any person or persons which might be necessary for that purpose, and to take water from any springs, ponds, fountains, or streams which might be approved of by the common council of the city of Syracuse and to divert and convey the same to the said city, and to lay and construct any pipes, conduits, aqueducts, wells, reservoirs, or other work or machinery necessary or proper for that purpose upon any lands so entered upon, purchased, taken, or held; but said company was not authorized, unless by the consent of the owner or person entitled to the use thereof, to take and divert any water from any spring, pond,
fountain, or stream within the city of Syracuse. Said corpo-
281 ration was also authorized to enter upon any lands, stream,
highway, roads, lane, or public square through which they might deem it proper to carry the water from said spring, &c., and to lay and construct any pipes, conduits, aqueducts, or other works for that purpose, provided they leave said lands, streets, highways, roads, lanes, and public squares in the same condition as nearly as they might be in before said entry, as appears more fully by said statute, which is hereby made a part of this finding.

8th. Provision was also made authorizing the corporation, in case

of the failure to agree with the owner or occupants of any lands or water intended to be taken or used for the purchase or use thereof, *may* apply to the supreme court for the appointment of commissioners to ascertain and determine the compensation to be paid, and the proceedings before and appeal from the determination of such commissioners were regulated. The act also provided that in laying pipes, conduits, or aqueducts or constructing or erecting works in the streets, lanes, or public squares of the city of Syracuse the company should conform to such regulations as the common council should prescribe, as appears more fully by said statute, which is hereby made a part of this finding.

9th. By section 16 of said act, as subsequently amended by chapter 104 of the laws of 1851, it was provided that the company should when requested furnish water to the common council of the city of Syracuse for extinguishing fires and other purposes upon such terms as might be agreed upon between the said common council and the company, and in case they could not agree that either said com-
mon council or said company might apply to the supreme
282 court, in the manner provided in said act, for the appointment of three commissioners, who should prescribe the terms upon which water should be furnished, and said company should furnish water upon the terms so prescribed for a period of three years, at the expiration of which time a new commission might be applied for by either the common council or the company, and thereafter once in three years a like application might be made. By section 19 of the act it was provided that nothing in said act should be deemed or taken to affect or impair or interfere with the rights, privileges, or obligations of the city of Syracuse derived or imposed by or under the act of March 27th, 1821, or any act subsequently passed amending or altering said last-mentioned act, as more fully appears by said statute, which is hereby made a part of this finding.

10th. By section 27 of said act the charges of the company for providing consumers were regulated, but by chapter 71 of the laws of 1865 said section was repealed.

11th. At the time of the passage of said act of 1849, at the instance of the common council of the city of Syracuse, which was dissatisfied with the charter of said water company as originally drafted, which was deemed to be oppressive towards the city, sections 26 and 29 of said act were inserted. Section 26 of said act provided that in case the company should not go on and furnish a sufficient supply of good and wholesome water for the use of the city and the people thereof within two years of the passage of said
act and *shall* fail to continue to furnish a sufficient supply,
283 the common council of said city might give six months' notice to said company to furnish the same, or that application should be made to the supreme court for the appointment of commissioners, as provided in the act, and in case such company should neglect to furnish such supply until the expiration of said notice, then the property of the company should be appraised in the manner provided in said act, and upon the payment by the common

council to the company of the sum so determined the common council should become the owners of said property so appraised and paid for and should be possessed of all the powers given by that act. By section 29 the common council of the city of Syracuse were given the right at any time after the expiration of twenty years to resume all the property, rights, powers, and privileges of the Syracuse City Water Works Company on paying to it the amount of capital stock actually paid in and expended in its works, with 15 per cent. annually thereon, deducting therefrom the actual profits annually received by the company, and on such resumption and payment by said common council all the rights, property, and privileges and powers of said company were to vest absolutely in the common council of the city of Syracuse, and the company was to convey to it all its property in said water works, as appears more fully by said statute, which is hereby made a part of this finding.

12th. Thereafter, on July 3d, 1849, Oliver Teall and Ira Seymour conveyed to the said Syracuse City Water Works Company all their property and rights in the water works conveyed to said Teall by the trustees of the village of Syracuse, and thereafter said
284 company acquired, by purchase or otherwise, new springs and constructed reservoirs, conduits, and water mains, and from that time to the present time it and its successors have supplied the city of Syracuse and its inhabitants, to the extent that its works permitted, with water for municipal and domestic purposes; that the springs and water supply originally constructed in the eastern part of the city and which were conveyed to said Teall by the trustees of the village and by him and his assigns to the Syracuse City Water Works Company were abandoned at about the time of the incorporation of said company.

13th. That thereafter the city of Syracuse paid to the said water works company, for the supply for fire and other purposes, large sums of money under contract from 1851 until 1868 and thereafter by virtue of awards of commissioners appointed under the provisions of section 16 of said act of 1849; that under the contract of 1851 the said city paid to the water works company the sum of $2,000 per annum; that said sum increased from year to year, until at present and for a number of years past the sum paid by the city of Syracuse to the said water works company for the use of said water for fire and other purposes has been the sum of $26,000 per annum.

14th. That the water works company has not constructed water mains in all the streets in said city, but, as appears from a chart belonging to the plaintiff, which was introduced in evidence, a large portion of the streets of said city *are* not supplied with water mains and a large portion of the city is without water supply, so far as the plaintiff is concerned, and is without protection against fires.

285 15th. That the water system of the plaintiff is unable to supply the elevated portions of the city of Syracuse lying in the 4th and 8th wards thereof with water for domestic or fire purposes.

16th. That a portion of the water mains of the said plaintiff con-

sist of sheet-iron piping and cement, and are inadequate for the purposes for which they are intended, and have a tendency to impair the efficiency of the water supply of the plaintiff for fire and other purposes.

17th. That by various acts of the Legislature of the State of New York the said water works company was authorized to increase its capital stock from the sum at first of $60,000 to $150,000, from $150,000 to $300,000, and from $300,000 to $1,000,000, and the capital stock of said company now consists of $440,000; that the greater portion of said capital stock consists of stock dividends issued from time to time by said company, upon which for a number of years past cash dividends at the rate of 6 per cent. per annum have been paid by said company.

18th. That by chapter 370 of the laws of 1879 the name of said Syracuse City Water Works Company was changed to the Syracuse Water Company.

19th. That the period for which the compensation was fixed which the city of Syracuse was to pay the plaintiff for the water supplied by it to the city for extinguishing fires and other purposes expired in July, 1884, and thereafter negotiations were commenced between said company and the city of Syracuse for a contract for the ensuing three years; that the said parties, however, failed to agree
286 upon said contract on account of the demand made by the plaintiff that the city should pay it for the water so supplied the sum of $40,000 per annum.

20th. The said plaintiff at present supplies water to the city for the purpose of extinguishing fires and other purposes at between 300 and 325 hydrants; that said hydrants are furnished by the city of Syracuse.

21st. During the period of its corporate existence the plaintiff has largely supplied private consumers within the city of Syracuse with water, and as its business increased and its existing sources of supply were deemed by it insufficient to answer all the requirements of the public the plaintiff extended its works and constructed and acquired new sources of supply and constructed new reservoirs and water mains, but it was not induced or led to make such improvements or the expenditures incident thereto by any promise, representation, or inducement made or offered by the city of Syracuse.

22. By the revised charter of the city of Syracuse, passed Feb. 21, 1885, and being chapter 26 of the laws of 1885, the common council of the city of Syracuse is empowered to make, establish, publish, modify, ordain, amend, or repeal ordinances, rules, regulations, and by-laws for various purposes; among others to light the streets and public buildings of the said city, and to supply the city with water, and to regulate the opening of the street services, and the laying of gas and water mains, as appears more fully from said statute, which is hereby made a part of this finding.

23. By the provision of chapter 85 of the laws of 1880 and chapter 386 of the laws of 1884 the various cities of the State, with
287 the exception of a number expressly specified, which do not include the city of Syracuse, are authorized to permit the

water companies organized under said acts to use the streets, squares, avenues, and public places of said cities for the purpose of laying their water mains and pipes, and to supply the said cities with water, and to enter into contracts with said water companies for the purpose of obtaining a supply of water from them for the purposes specified in said acts.

24. That on the 12th day of March, 1885, the defendant, The Central City Water Works Company, was duly organized and incorporated in conformity with the act of the Legislature of the State of New York passed on the 17th day of Feb., 1848, entitled "An act to authorize the formation of incorporations for manufacturing, mining, mechanical, or chemical purposes, and the several acts of the Legislature amendatory thereof and supplemental thereto, and with the act of said Legislature passed March 31st, 1880, entitled An act supplemental to chapter 40 of the laws of 1848, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes, and the amendment made thereto," known as chapter 85 of the laws of 1880, and the acts amendatory thereof and supplemental thereto, for the purpose of supplying the city of Syracuse, N. Y., and adjacent villages with pure and wholesome water for domestic use, for fire protection, and other public purposes, and for the purpose of accumulating, storing, selling, furnishing, and supplying water in said city and adjacent villages for domestic, manufacturing, municipal, and agricultural purposes.

288 25th. That said corporation duly applied to the common council of the city of Syracuse for its consent to construct water works and to lay water mains, conduits, and aqueducts upon the streets and public squares of said city for the purpose of its incorporation, and thereafter, on the 23d day March, 1885, the said common council duly passed the resolution annexed hereto and marked Schedule A, which resolution, after being duly certified by the city clerk of said city of Syracuse, was on said 23d day of March, 1885, duly approved by the mayor of said city.

26th. That thereafter and on the fourth day of April, 1885, the said Central City Water Works Company duly filed with the city clerk of Syracuse its written acceptance of said resolution, duly acknowledged by its president, whereby it accepted the said resolution and the grant, franchise, and privileges thereby conveyed and therein expressed and described, and also accepted and assumed a performance of all the conditions and provisions contained in said resolution which are required to be observed and performed by it.

27th. That the said Central City Water Company has duly entered upon the performance of the conditions specified in the said resolution, and has commenced its surveys for the purpose of constructing its works, and has otherwise incurred expenditures of money for that purpose.

28th. That on the 27th day of May, 1841, the board of trustees of the village of Syracuse, N. Y., duly and legally passed resolutions authorizing a conveyance from the village of Syracuse to

289 Oliver Teall pursuant to the several acts of the Legislature, and that the following are the resolutions:

SYRACUSE, *May 27th*, 1841.

The trustees met Thursday, May 27th, 1841, at 3 o'clock p. m., pursuant to an adjournment.

Present: Hiram Putnam, president; Thos. T. Davis, Wm. Barker, Elisah George, Johnson Hall, trustees.

On motion,

Resolved, That a deed be executed to Oliver Teall pursuant to an act of the Legislature of the State of New York entitled "An act to supply the village of Syracuse with wholesome water," passed March 27th, 1821, and pursuant to amendments of said act passed April 23d, 1829, April 22d, 1834.

On motion,

Resolved, That Thos. T. Davis be, and he is hereby, appointed a committee to make out the deed, as directed in the above resolution.

W. M. CLARK, *Clerk.*

29th. That by a provision in the 9th section of the act of 1834 it was provided that "the trustees of the village of Syracuse shall have power at the expiration of 35 years to reinvest themselves and take possession of said water works and all appurtenances thereunto belonging by paying at the time of so taking possession thereof, estimating said water works and appurtenances at the necessary cost of erecting such works, deducting the decrease in their value by reason of their waste and decay by time and use."

290 30th. That the village of Syracuse never did reinvest themselves of said water works, nor did said village or its trustees ever offer to pay for or take possession of the same in any manner under said act or otherwise.

31st. That the defendant, The City of Syracuse, is a domestic municipal corporation duly and legally organized under the laws of the State of New York by chapter 475, passed December 14th, 1847, and that said city succeeded to all of the rights, powers, and obligations of the said village in reference to the supply of water.

That Thos. Ryan is now and for two years last past has been the acting mayor of the defendant, The City of Syracuse.

32d. That in and by the charter of the city of Syracuse all acts and parts of acts relating to the supplying of the village of Syracuse with wholesome water and any act done, privilege granted, right accrued or established under any former act in relation to that subject were expressly reserved and excepted from the repealing clause of said charter; and it was expressly declared by said charter of the defendant city that "every such act, privilege, right, and location shall remain as valid and effectual as if said acts had remained in force, and that the same rights, duties, obligations, and requirements as are now held by the trustees of the village of Syracuse or imposed on them in relation to Oliver Teall as to supplying the said village with pure and wholesome water shall be conferred and imposed upon the said common council" of the defendant city.

291 33d. That the trustees of the village of Syracuse, shortly before its incorporation as a city, to wit, Nov. 8th, 1847, and

the common council of the city of Syracuse, shortly after being incorporated, to wit, July 5th, 1848, adopted resolutions recognizing, confirming, and granting to said Oliver Teall and his associates, then called the Syracuse Water Works Company, the right to go to Furnace brook and any sources of supply, wherever situated, in order to supply Syracuse with wholesome water, and that at all times afterwards the said company acted upon the said resolutions and expended very large sums of money in procuring and furnishing such supply from said sources.

34th. That the plaintiff is a domestic corporation duly and legally organized under the *of* laws of the State of New York by chapter 224 of the laws of 1849, entitled "An act to incorporate the Syracuse City Water Works Company," passed April 5th, 1849, and the several acts amendatory thereof, and that the name of the company now is and since April, '79, has been "The Syracuse Water Company," and that its present capital stock is $440,000, which is divided into shares of $50 each; that its bonded indebtedness is $200,000, and that the same is outstanding and unpaid, and that the said company and its directors are heavy tax-payers in The City of Syracuse, the defendant corporation; that said charter incorporated the previous unincorporated company, and the new company succeeded to all of the rights, duties, and obligations of the old company.

35th. That before the passage of the plaintiff's charter the terms of the same were duly submitted to and agreed upon by the
292 common council of the defendant city and water works company, the plaintiff's assignors and grantors, after suggestions and amendments were duly made, and the same was adopted by the city defendant with full knowledge of what the charter contained and upon the written recommendation of the said common council thereto given and made.

36th. That said charter expressly provides that "for the purpose of supplying the city of Syracuse with pure and wholesome water" that it might condemn lands and real estate and take and hold the same "and bring water into said city from any springs, ponds, fountains, or streams which may be approved by the common council of said city, and that said water might be diverted from its source and conveyed into the city, and that said plaintiff might construct and lay pipes, conduits, aqueducts, wells, reservoirs, or water works or machinery necessary or proper for said purposes."

That by said charter the plaintiff's grantors were the persons recognized as the owners of the said water works company then supplying the city of Syracuse with water.

That by said charter it was further expressly provided that said plaintiff should, on request, furnish to the common council of said city water for extinguishing fires or other purposes.

That subsequently and on the 21st day of April, 1851, after the construction of the plaintiff's works, the common council did, in writing and by a resolution of that date duly and legally passed by them, request the plaintiff to furnish the said city with water
293 for fire and other purposes, pursuant to section 16 of the plaintiff's charter, and that the plaintiff thereupon com-

menced to furnish and has ever since continued to furnish the same without interruption to the present time under and in accordance with said request, and that the price of so furnishing said water has been paid by said city except since July 1st, 1884.

37th. That under and by said charter it is further provided as follows:

Chapter 224, section 26.

"In case said company shall not go on and furnish a sufficient supply of good and wholesome water for the use of said city and the people thereof within two years from the passage of this act, and continue to furnish a sufficient supply, the common council of said city may give six months' written notice to said company to furnish the same, or that application will be made to the supreme court for the appointment of five commissioners, as provided in the tenth section of this act; and in case the said company shall continue to neglect to furnish said supply until the expiration of said notice, then the property of said company shall be appraised in the manner provided in said tenth section; and upon the payment *of* said common council to said company of the sum so determined, then the said common council shall become the owners of said property so appraised and paid for, and be possessed of all the powers given by this act to the said company."

38th. That the plaintiff is furnishing about 4,000,000 gallons of water daily to the city and its inhabitants, and that it has water power and capacity to furnish 10,000,000 gallons per day if
294 required to do so by the common council and the inhabitants of said city.

39th. That under the direct sanction and directions of the common council and with their approval and consent and upon their visiting and inspecting, all of the water brought into said city has been brought in and distributed by the plaintiff, and that no notice in writing or otherwise has ever been served upon the plaintiff or its officers or agents that the same was not satisfactory, pure, and wholesome, or that the supply was not good and sufficient in quality or quantity.

40th. By the revised charter of the city of Syracuse, passed March 3, 1857, and being chapter 63 of the laws of 1857, the common council of the city of Syracuse was empowered to make, establish, publish, modify, ordain, amend, or repeal ordinances, rules, regulations, and by-laws; to light the streets and public buildings of the city, and to supply the city with water.

Conclusions of Law.

I.

That the plaintiff, The Syracuse Water Company, never acquired an exclusive right to supply the city of Syracuse or inhabitants with water or to use the streets for the purpose of laying its mains and conduits or of enjoying a monopoly with reference to the water supply of the city.

II.

The defendant, The City of Syracuse, is not estopped by any act done or performed by it from granting to the defendant, The
295 Central City Water Works Company, the right to construct water works within this city for the purpose of supplying the corporation and the inhabitants of Syracuse with water.

III.

That the defendant, The Central City Water Works Company, is not estopped from accepting the franchise created by the resolution passed by the common council of the city of Syracuse on March the 23d, 1885.

IV.

The common council of the city of Syracuse has the right and power of granting to the Central City Water Works Company the franchise contained in the resolution passed by that body on March 23d, 1885.

V.

The right was conferred upon the Central City Water Works Company by said resolution of March 23d, 1885, of laying its water mains and conduits in streets, avénues, highways, and public squares of said city, and of constructing reservoirs and conduits and of maintaining the water works within the city of Syracuse.

VI.

The complaint in this action should be dismissed against the city of Syracuse with costs, and the injunction heretofore granted herein against said defendant be vacated and dissolved.

VII.

The complaint in this action should be dismissed against
296 the Central City Water Works Company with costs, and the injunction heretofore granted herein against said defendant vacated and dissolved.

P. C. WILLIAMS, *J. S. C.*

Schedule A annexed, printed above, Exhibit 1, page 88.

Supreme Court, Onondaga County.

SYRACUSE WATER COMPANY *against* THE CITY OF SYRACUSE and CENTRAL CITY WATER WORKS COMPANY.	Judgment Sept. 11, 1885.

This action having been brought to issue by the service of an answer, on behalf of the defendant herein, to the complaint herein, and the issue joined having been brought to trial at a special term of the supreme court, held at the city of Syracuse, N. Y., and the re-

spective parties having presented their proofs and exhibits and submitted their case to the court for decision, and the court having duly filed its decision herein: Now, therefore, in conformity with said decision, and after hearing Forbes, Brown & Tracy and Hon. George F. Comstock for plaintiff and Louis Marshall for the defendant—

It is adjudged and decreed that the plaintiff, The Syracuse Water Company, never acquired an exclusive right to supply the city of Syracuse or its inhabitants with water, or to use the streets for the purpose of laying its mains and conduits, or to enjoy a
297 monopoly with reference to the water supply of the city.

It is further adjudged and decreed that the defendant, The City of Syracuse, is not estopped by any act done or performed by it from granting to the Central City Water Works Company the right to construct water pipes within the city for the purpose of supplying the corporation and the inhabitants of Syracuse with water.

It is further adjudged and decreed that the common council of the city of Syracuse had the right and power of granting to the Central City Water Works Company the franchise contained in the resolution passed by that body on March 23, 1885.

It is further adjudged and decreed that the right was conferred upon the Central City Water Works Company by said resolution of March 23, 1885, of laying its water mains and conduits in the streets, avenues, highways, and public squares of said city, and of constructing reservoirs and aqueducts, and of maintaining water works within the city of Syracuse.

It is further adjudged and decreed that the complaint in this action should be dismissed, and that the defendant, The City of Syracuse, have judgment against the plaintiff, Syracuse Water Company, for $55, costs and disbursements, and the said defendant, The City of Syracuse, have execution therefor.

It is further adjudged and decreed that the complaint
298 should be dismissed as against the defendant, The Central City Water Works Company, and that the said defendant, The Central City Water Works Company, have judgment against the plaintiff, Syracuse Water Company, for $57.13, costs and disbursements, and that the said defendant, The Central City Water Works Company, have execution therefor.

It is further adjudged and decreed that the injunction heretofore granted herein be, and the same is hereby, vacated and dissolved.

(Signed) GUSTAVUS SNIPER, *Clerk.*

(Endorsed:) Filed Sept. 11, 1885, at 12 m.

Supreme Court.

THE SYRACUSE WATER COMPANY, Appellant,
against
THE CITY OF SYRACUSE and CENTRAL CITY WATER WORKS COMPANY, Respondents.

GENTLEMEN: Take notice that the appellant above named appeals to the supreme court at general term from the judgment of the su-

preme court herein entered in the clerk's office of the county of Onondaga on the 11th day of September, 1885. The appellant
299 intends to bring up for review upon such appeal said judgment and each and every part thereof.

Dated September 16, 1885.

Yours, &c., FORBES, BROWN & TRACY,
Attorneys for the Appellant.

To the clerk of the county of Onondaga and to Edwin S. Jenney, Esq., attorney for the city, and to Louis Marshall, Esq., attorney for the Central City Water Works Co., respondents.

Supreme Court.

SYRACUSE WATER COMPANY *against* THE CITY OF SYRACUSE. } Exceptions to Findings.

GENTLEMEN: The plaintiff excepts to the findings of the court as follows:

First. To the findings of fact:

1. Plaintiff excepts to so much of the 11th finding as finds that section 29 of the act of 1849 was inserted in said act at the request and instance of said city.

2. Plaintiff excepts to so much of the 12th finding as finds that the springs and water supply constructed in the eastern part of the city were abandoned at about the time of the incorporation of plaintiff.

3. Plaintiff excepts to — the 14th finding as finds that plain-
300 tiff has not constructed water mains, and that a large portion of the city of Syracuse is without water supply so far as the plaintiff is concerned.

4. Plaintiff excepts to finding that the water system of the plaintiff is unable to supply the elevated portions of said city, as set forth in the 15th finding.

5. Plaintiff excepts to the finding that a portion of the water mains of said plaintiff consists of sheet-iron pipes and cement and are inadequate for the purpose intended, as set forth in the 16th finding.

6. Plaintiff excepts to the finding that the greater portion of the capital stock of the plaintiff consists of stock dividends, as set forth in the 17th finding.

7. Plaintiff excepts to the finding that the parties failed to agree because of the demand of the plaintiff to be paid $40,000 per annum, as set forth in the 19th finding.

8. Plaintiff excepts to so much of finding 21 as finds that the improvements or expenditures incident to the extension of plaintiff's works were not made by any promise, representation, or inducement of said city.

9. Plaintiff excepts to the finding that the revised charter of the city of Syracuse, passed Feb. 21, 1885, empowered said city to make

ordinances, &c., for the purpose of supplying the city with water, as set forth in the 22d finding.

10. Plaintiff excepts to so much of the 23d finding as finds that under the provisions of the laws of 1880 and 1884 the city of Syracuse was authorized to permit the Central City Water Works Company to use the streets of said city to lay mains, &c., and to enter into contracts with said company to supply said city with water.

301 11. Plaintiff excepts to so much of finding 24 as finds that the Central City Water Works Company was duly organized for the purpose therein mentioned.

12. Plaintiff excepts to so much of findings 25, 26, and 27 as finds that the Central City Water Works Company duly applied to the common council of the city of Syracuse for its consent to construct water works and lay water mains, &c., and that said common council duly passed a resolution referred to therein, and that said company duly filed its written acceptance thereof, and that said company has duly entered upon the performance of the conditions contained in said resolution.

Second. To the conclusions of law:

1. Plaintiff excepts to the conclusions that the plaintiff never acquired an exclusive right to supply the city of Syracuse with water or to use the streets for that purpose.

2. Plaintiff excepts to the conclusion that the city of Syracuse is not estopped from granting the Central City Water Works Company the right to construct water works within the city for the purpose of supplying it with water.

3. Plaintiff excepts to the conclusion that the said Central City Water Works Company is not estopped from accepting the franchise created by the resolution passed by the common council of the city of Syracuse March 23, 1885.

4. Plaintiff excepts to the conclusion that the common council of the city of Syracuse has the right and power of granting to

302 the Central City Water Works Company the franchise contained in the resolution passed by that body March 23, 1885.

5. Plaintiff excepts to the conclusion that the right of laying mains, &c., in the streets of said city and of constructing reservoirs, &c., and of maintaining water works in said city was conferred by said resolution.

6. Plaintiff excepts to the conclusions that the plaintiff's complaint should be dismissed with costs and the injunctions obtained herein dissolved.

Third. To the refusals to find as requested by the plaintiff, plaintiff excepts as follows:

1. To the refusal to find that under the charter of the city and the acts of the plaintiff and the city there is an existing contract between the city corporation and the plaintiff by which the plaintiff is entitled to supply the city with water for municipal purposes.

2. To the refusal to find that in pursuance to the authority given by the resolutions passed by the board of trustees of the village of Syracuse and of the several acts of the Legislature the trustees of

the village of Syracuse did duly and legally, by deeds in writing, convey to Oliver Teall all the rights, powers, and privileges of the village of Syracuse, its freeholders and inhabitants, to supply the village of Syracuse with wholesome water, by virtue of the acts of 1821 and 1825, and of all the powers of said village in reference to that subject.

3. To the refusal to find that said conveyances were delivered to and accepted by said Oliver Teall upon the faith of said grants, and that said Teall duly took possession of all of said powers,
303 rights, and privileges under said deeds, the said Teall and his grantees and associates, under the name of "The Syracuse Water Works Company," furnishing said village with its entire supply through pump logs down to the time of the incorporation of the city of Syracuse and to the time of the incorporation of the plaintiff, April 5, 1849.

4. To the refusal to find that the right to supply water to said city through Oliver Teall and his assigns was the only right then had or right to supply water held by the city of Syracuse under said charter, granted in express terms or otherwise, except the words "supplying the village with good and wholesome water," which preceded said reservation and are intended to be limited by and extended to said exception, reserving the exclusive right to Oliver Teall and to his assigns to supply said city with pure and wholesome water.

5. To the refusal to find that the city of Syracuse, under its charter, by any terms therein expressed, had no right to supply itself with water in any other manner except through Oliver Teall, his heirs and assigns, and the Legislature did not intend to grant the said city, defendant, any other right, power, or privilege to supply itself with pure and wholesome water.

6. To the refusal to find that the trustees of the village of Syracuse, before its incorporation as a city, to wit, Nov. 8, 1847, and the common council of the city shortly after being incorporated, to wit, July 5, 1848, adopted resolutions recognizing, confirming, and granting to said Oliver Teall and his associates, then called the
304 Syracuse Water Works Company, the right to go to Furnace brook and any sources of supply, wherever situated, in order to supply Syracuse with wholesome water, and that at all times afterwards the said company acted upon the said resolutions and expended very large sums of money in procuring and furnishing such supply from said sources, and that the acts done and the privileges conferred before the defendant city's incorporation were expressly reserved to the plaintiff and its grantors and associates in the defendant city's charter and became a part thereof.

7. To the refusal to find that the plaintiff has furnished and has continued to furnish the entire city supply of water, and is now furnishing the same in pursuance of defendant city's request and the provisions of its charter, and that the plaintiff has never neglected or refused to furnish a sufficient supply of good, pure, and wholesome water to said city and its inhabitants since the said request of the said common council.

8. To the refusal to find that by the plaintiff's charter, passed in

1849, section 29, chapter 224, the city of Syracuse has not the right, power, and privilege of supplying itself with water otherwise than as in the manner pointed out therein, and that there is no power given by the charter of 1857 and of 1885 for the city of Syracuse to supply itself with water for fire, domestic, and other purposes otherwise than in accordance with pre-existing laws and provisions.

9. To the refusal to find that the only power in the city to raise taxes to pay for water dues and rates to the city is confined to water dues under chapter 445 of the laws of 1870, section 2, and
305 that the provisions in the charter of 1857, title 4, sub. 2, and and of 1885, title 4, section 22, sub. 2, are the only ones on the subject of water supply in said charters which provide for the payment of these water dues to the plaintiff, and that the dues fixed by said charters were at the time of fixing the same and the enacting of said charters the amounts due or to become — to the plaintiff under contracts or awards, and were made with reference to the same and not otherwise.

10. To the refusal to find that plaintiff laid all the pipes and mains asked for by the common council, and have extended their works from time to time and invested therein, under the direct sanction and approval of the common council, the sum of about $728,000, nearly all which has been expended since the request by the resolution of April 21, 1851, and that the city of Syracuse has never attempted or offered to reinvest itself with said water works nor has offered to take or pay for the same in any manner.

11. To the refusal to find that the plaintiff has the exclusive right to supply the city of Syracuse with water to extinguish fires and for other purposes, and that the city of Syracuse has no right to grant that right and power of supply to the Central City Water Works Company nor to any person, persons, or corporations by any power or authority from the State of New York or otherwise under existing laws.

12. To the refusal to find that the city of Syracuse did, before the commencement of this action, grant to the Central City Water Works Company a franchise to bring water into the city and distribute the same, making a contract with said company for 20 years to
306 supply said city with water for fire and other purposes and interfering with the rights, powers, and privileges of the plaintiff to furnish said city with water to extinguish fires and for other purposes.

13. To the refusal to find that the Central — Water Works Company has accepted said grant and duly filed their acceptance thereof in the office of the city clerk in said city, and are now and were at the commencement of this action attempting to use and exercise said grant, and are threatening to use and exercise the same by and with the consent and assistance of the city, defendant.

14. To the refusal to find that the plaintiff has vested and exclusive rights, powers, and privileges to furnish the city of Syracuse with pure and wholesome water, and that their rights, privileges, and powers are continuing powers until the city reinvests itself of

the same in the manner pointed out by the said several acts and charters herein set forth and referred to in these requests.

15. To the refusal to find that the defendant has no right, power, or authority to interfere with or appropriate the same in any manner, except by compensation to the plaintiff under said several acts.

16. To the refusal to find that the city of Syracuse, by its conduct towards and dealings with and relations to the plaintiff, is estopped from granting any power or privilege to the other defendant to bring water into said city under said contract.

17. To the refusal to find that the plaintiff has been in the absolute possession and enjoyment of all of said rights, powers, and privileges for more than thirty-four years next last past, and was
307 so in the actual possession of the same at the time of the commencement of these actions.

18. To the refusal to find that the objects of the several acts on the subject of water supply was to supply the village and city of Syracuse with pure and wholesome water, beginning with the act of 1821, and that it was the intention of the Legislature to assist the said village and the city of Syracuse to supply the city with water through the plaintiff exclusively.

19. To the refusal to find that the plaintiff has existing vested equities to supply water to said city and its inhabitants exclusively.

20. To the refusal to find that the Legislature of this State has never repealed or in any manner interfered with the conveyed and vested rights of the plaintiff and its grantors or assignors, and that all of such rights, powers, and privileges remain in the plaintiff.

21. To the refusal to find that the plaintiff is entitled to the relief demanded in the complaint.

22. To the refusal to find that the conveyance from the village of Syracuse to Oliver Teall and his assigns became absolute upon the acceptance of said Teall of said conveyance, and gave to said Teall and his assigns the exclusive right to furnish the city and its inhabitants with water under the several charters of the city and of the plaintiff.

23. To the refusal to find that the Legislature had no right or power to pass any law impairing the plaintiff's right to furnish water under said conveyances and the several acts confirming the same and giving those rights to the plaintiff.

308 24. To the refusal to find that said rights, powers, and privileges became vested in the plaintiff, and that the Legislature of the city, defendant, had no right or power to grant the same or any part thereof to the Central City Water Works Company, and that all rights not vested in the plaintiff remain in the State and are not given to the city.

25. To the refusal to find that the grant to plaintiff and its assignors and grantors was a perpetual grant, continuing until the expiration of thirty-five years from April 22, 1834, and thereafter until the said defendant, The City, reinvested itself of the same under said act and the charter of the plaintiff's incorporation.

26. To the refusal to find that the grant by the city, defendant, through its common council, to the Central City Water Works Com-

pany was and is void, and that said defendant city gave and the said Central City Water Works Company took no rights, powers, or privileges under the same as against the plaintiff, and that no rights were given or acquired under said grant.

27. To the refusal to find that the plaintiff has the exclusive right and power to supply the city of Syracuse and its inhabitants with pure and wholesome water for extinguishing fires and other purposes, and that the city had no right to grant the same away.

28. To the refusal to find that the plaintiff has been in actual possession and enjoyment of all of said rights, powers, and privileges to furnish said water supply for 34 years under the city's express directions, orders, and its request, as aforesaid, that the
309 city is estopped by its conduct towards the plaintiff from claiming any power in itself to furnish water to itself without taking plaintiff's plant and property and paying for the same, and is estopped from denying that the plaintiff has the exclusive right to furnish water to the said city.

29. To the refusal to find that the defendants should be restrained from interfering with the plaintiff's rights, powers, and privileges under their charter and otherwise, and a perpetual injunction should be, and hereby is, granted restraining the defendants in all respects, as set forth in the original injunction orders, and they are thereby made permanent in this action, and that judgment be entered accordingly.

FORBES, BROWN & TRACY,
Plaintiff's Attorneys, 1, 2, 3, and 4 Stevens Block, Syracuse, N. Y.

To E. S. Jenney, attorney for city, and Louis Marshall, attorney for the Central City Water Works Company, No. 2 Granger block, Syracuse, N. Y.

310 *Judgment-Roll.*

Supreme Court.

Trial desired in Onondaga county.

SYRACUSE WATER COMPANY
against
THE CITY OF SYRACUSE.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against — by default for the relief demanded in the complaint.

Dated March 23d, 1885.

FORBES, BROWN & TRACY,
Plaintiff's Attorneys.

Office address and post office, 1, 2, and 3 Stevens block, Syracuse, N. Y.

ONONDAGA COUNTY, *ss:*

Supreme Court.

SYRACUSE WATER COMPANY
against
THE CITY OF SYRACUSE.

The plaintiff complains against the defendant, and for a cause of action respectfully shows to this court:

1. That the plaintiff is a domestic corporation, duly and legally organized and incorporated under the laws of the State of New
311 York, and is doing business and having its principal place of business at the city of Syracuse, N. Y., under the name, style, and organization of "The Syracuse Water Company."

2. That the defendant is a domestic corporation duly and legally organized under the laws of the State of New York, under chapter 475 of the laws of 1847, passed Dec. 14, 1847, and the several acts amendatory thereof and in addition thereto, and that the mayor and aldermen and common council of said city are the acting municipal officers of said city, and are now and for a long time have been exercising the duties appertaining to said offices.

That under and by virtue of the charter of the city of Syracuse the said board of common council were and are invested with the right, power, and authority to grant certain licenses, grants, and franchises to certain persons and corporations to do and perform certain acts within the provisions of said charter and not otherwise.

That the plaintiff's corporation were by several acts of the Legislature, duly and legally passed and enacted and becoming the laws of the State of New York, duly granted the right, power, privilege, exclusively, of building and erecting staging, plants, reservoirs, dams, mains, pipes, hydrants, and water fixtures through, along, and upon the streets, lanes, alleys, and public parks and squares of the defendant, said grant having been taken from the village of Syracuse and confirmed by, through, and under the power, authority, and legal proceedings — part and behalf of the defendant, duly and legally made, granted, accepted, and entered into by the plaintiff on the one side and the defendant on the other
312 side, as plaintiff is informed and believes.

That upon the organization of the Syracuse City Water Works Company said company became vested with said exclusive powers, rights, grants, privileges, and franchises by conveyance and otherwise, as plaintiff is informed and believes.

That after said grant, in 1849, the said plaintiff, while thus vested with said rights, powers, and privileges and franchises so granted as aforesaid, *the plaintiff* entered upon the work of building mains, reservoirs, dams, pipes, hydrants, and erecting pumps, machinery, and appliances to enjoy and use said grant, powers, privileges, and franchises, and did so erect, build, and construct the same and laid out, expended, and invested thereon from time to time the sum of seven hundred and twenty-eight thousand dollars or thereabouts,

and that the same was done with the consent, approval, and under the direction of the defendant and its officers, as plaintiff is informed and believes.

That under and by said grant, power, and franchise the said defendant reserved to itself the right and power to take said grant, powers, and franchises from the plaintiff upon certain conditions set forth and provided for therein, which power and privilege said defendant has not at any time exercised in that manner and as provided for in and by the said grant and conveyance.

That said rights, powers, privileges, and franchises have been so exercised by said plaintiff and its grantors with the acquiescence and consent of defendant for upwards of fifty years, as plaintiff is informed and believes.

313 That the said defendant, through its common council and officers, threatens and claims the right to interfere with said grant, powers, privileges, and franchises of the plaintiff acquired as aforesaid, and to destroy, injure, and depreciate in value said plaintiff's property by granting to the Central City Water Works Company, who claim to be organized as a domestic corporation, the rights, powers, privileges, and franchises so acquired by the plaintiff.

That said corporation is without the legal right or power or authority, except by force, to take said grant or to enter upon the performance of their contract, if one is made, in digging up the streets, lanes, parks, and squares of the defendant, or to enter upon any contract with said city, as plaintiff is informed and believes.

That the plaintiff is informed and believes that the public health of said defendant, The City of Syracuse, and its inhabitants may and will be greatly endangered and impaired by the digging up of the streets, mains, and hydrants and opening the sewerage of said city, and that the same will become a public nuisance, and that the granting of said franchise would result in the performance of said several dangerous and injurious acts, as plaintiff is informed and believes.

That many of the public streets are paved and graded, and that the digging up of said streets would necessarily destroy and greatly injure the same and the rights of the defendant, and that the same cannot be properly restored, as plaintiff is informed.

That the plaintiff and stock and bond holders are heavy taxpayers and have a deep interest in the welfare of said city;

314 that in carrying out said grant, powers, and franchises the plaintiff has necessarily issued bonds predicated upon their grant and privilege to the extent of more than $20,000,000, and which are now drawing interest from the earnings of said plaintiff at the rate of six and seven per cent. per annum, and that the principal cannot be paid in full until the year 1908, and that the granting of said franchise will or may hazard the rights of said bondholders and imperil the interest of the plaintiff in their capital and stock and other property.

Wherefore the plaintiff demands that the defendant, its officers, agents, and attorneys and all persons acting for them and in their

behalf, may be restrained from granting any right, power, privilege, or franchise of any name or nature to the Central City Water Works Company or to any other person or persons to dig up the streets, mains, and sewers of said city, or to lay any pipes, mains, or hydrants in and upon or along any of the streets of said city or in any lanes, squares, or public parks except as the plaintiff may in prudence lawfully do in the premises.

2. That the rights and privileges of the plaintiff under said grants may be determined and adjudicated upon and settled by this court.

3. For such other, further, or different rule, order, or relief as the court may deem fit and equitable in the premises, with costs.

FORBES, BROWN & TRACY,
Plaintiff's Attorneys, 1, 2, 3, and 4 Stevens Block, Syracuse, N. Y.

315 STATE OF NEW YORK, } *ss:*
County of Onondaga, }

E. W. Leavenworth, being duly sworn, says that he is and for a long time has been the president of the plaintiff; that he has heard read the foregoing complaint and knows its contents, and that the same is true of his own knowledge except as — those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

E. W. LEAVENWORTH.

Sworn to before me this 23d day of March, 1885.

D. T. WILLS,
Commissioner of Deeds, Syracuse, Onondaga County, N. Y.

Supreme Court.

SYRACUSE WATER COMPANY
against
THE CITY OF SYRACUSE.

ONONDAGA COUNTY, *ss:*

ELIAS W. LEAVENWORTH, being duly sworn, says that he is the president of said plaintiff and has been for many years past; that he is familiar with the several acts of the Legislature of the State of New York referred to in the complaint herein and with the provisions of the charter of the city of Syracuse and with the franchises and rights granted thereby to the plaintiff, and that the allegations con-
316 tained in said complaint in regard thereto are true to the best of deponent's knowledge, information, and belief.

Deponent further says, as he is advised and very believes, that by said several acts and dealings and contracts from time to time between plaintiff and defendant thereunder that the said plaintiff is entitled to the exclusive privileges of carrying on the water business in the city of Syracuse and supplying the inhabitants thereof with water until the rights of the plaintiff in said business are taken and assumed by the defendant and the plaintiff paid therefor in the manner provided by statute.

Deponent further says that the alleged corporation styling themselves the Central City Water Works Company have made application to the mayor and common council of the city of Syracuse for leave to lay pipes and mains in the public streets of Syracuse and to carry on the business of supplying the inhabitants of this city with water and taking whatever means may be necessary for that purpose, and that said mayor and common council are about to grant said application and to allow the said streets of said city to be torn up and new pipes and mains to be laid therein by said city water works, as deponent is informed and believes.

That if said application be granted irreparable damage will result to plaintiff, and plaintiff will be thereby deprived of valuable franchises granted to it by defendant and the Legislature of this State and by defendant's contracts and dealings with plaintiff.

That under said acts plaintiff and its predecessors has supplied the inhabitants of said city of Syracuse and the former village
317 of Syracuse with water for nearly fifty years last past, and that, induced by said acts and said contracts and dealings between plaintiff and defendant, plaintiff has expended the sum of $728,000 in constructing and improving the plant used in its business and in the purchase of real estate required therefor.

That said plaintiff on account thereof has been obliged to issue bonds to the amount of $200,000 to secure debts contracted for construction, and that if said franchises applied for by said Central City water works be granted to said last-mentioned company the payment of said bonds will be seriously endangered and plaintiff's stock may become wholly valueless.

Deponent further says that new pipes and mains necessary for such new water works could not be laid in said city without tearing up all the principal streets and leaving the same in such torn-up condition for a long period of time; that the lives and health of the inhabitants of said city will be seriously endangered by digging up its streets and turning over the same in such an extensive manner, and that lasting injury would necessarily result therefrom to the grading and paving of said streets caused by the sinking and depressions of portions thereof.

Deponent further says that no previous application has been made to any court or judge for an injunction order herein, and that plaintiff has no adequate remedy at law against the defend-
318 ant in the premises, and that the stockholders and bondholders of said plaintiff are heavy tax-payers in said city.

E. W. LEAVENWORTH.

Sworn to before me this 23rd day of March, 1885.

D. T. WILLIS,
Com. of Deeds, Syracuse, Onondaga Co., N. Y.

"Endorsed:" Read on motion for injunction order. Geo. N. Kennedy, jus. sup. court.

Supreme Court.

SYRACUSE WATER COMPANY
against
THE CITY OF SYRACUSE.

The above-named plaintiff having applied or being about to apply for an injunction herein restraining the defendant from granting to the Central City Water Works Company or any other persons the right to enter into and upon the streets, lanes, alleys, avenues, and public squares of said city for the purpose of laying down mains and pipes to be used for conducting water into and for the use of said city or from exercising any right within said city on the part of said water works company under their articles of incorporation, filed in the Onondaga county clerk's office March 12, 1885, as therein particularly mentioned:

Now, therefore, we, Alfred A. Howlett and Horace K. White, of the city of Syracuse, by occupation a banker and capitalist,
319 do hereby jointly and severally undertake, promise, and agree to and with the said defendant that the plaintiff will pay to the defendant enjoined such damages, not exceeding the sum of one thousand dollars, as it may sustain by reason of such injunction if the court shall finally decide that the said plaintiff is not entitled thereto, such damages to be ascertained by a reference or in such other manner as the court may direct.

Dated March 23, 1885.

A. A. HOWLETT.
HORACE K. WHITE.

STATE OF NEW YORK, *County of Onondaga*, } *ss:*

Alfred A. Howlett, one of the subscribers to the above undertaking, being duly sworn, says that he is a resident and freeholder within this State and is worth the sum of two thousand dollars over and above all debts and liabilities which he owes or has incurred, exclusive of property exempt by law from levy and sale under an execution.

A. A. HOWLETT.

Subscribed and sworn to before me this 23d day of March, 1885.

D. T. WILLIS,
Com. of Deeds, Syracuse, Onondaga Co., N. Y.

STATE OF NEW YORK, *County of Onondaga*, } *ss:*

Horace K. White, one of the subscribers to the above undertaking, being duly sworn, says that he is a resident and freeholder within this State and is worth the sum of two thousand dollars over and above all debts and liabilities which he owes or has
320 incurred, exclusive of property exempt by law from levy and sale under an execution.

A. A. HOWLETT.
HORACE K. WHITE.

Subscribed and sworn to before me this 23d day of March, 1885
D. T. WILLIS,
Com. of Deeds, Syracuse, Onon. Co., N. Y.

STATE OF NEW YORK, *Onondaga County,* } ss:

On this 23d day of March, in the year one thousand eight hundred and eighty-five, before me, the subscriber, appeared A. A. Howlett and Horace K. White, to me personally known to be the same persons described in and who executed the above undertaking, and they acknowledged that they executed the same.
D. T. WILLIS,
Commissioner of Deeds, Syracuse, Onondaga County, N. Y.

Supreme Court.

THE SYRACUSE WATER COMPANY *against* THE CITY OF SYRACUSE. } Injunction.

On reading the complaint in this action, duly verified, also the affidavit of Elias W. Leavenworth that the defendant is about to grant to the Central City Water Works Company rights and privileges in derogation of the rights of the plaintiff, it is ordered that the defendant and its mayor and common council and their
321 attorneys, counsellors, agents, and assistants be, and each and every of them is, under the penalties by law prescribed, enjoined and restrained until the further order of the court in the premises from granting to the Central City Water Works Company or any other person or persons the right to enter into and upon the streets, lanes, alleys, avenues, or public squares of said city for the purpose of laying down mains or pipes to be used for conducting water into and for the use of said city or from exercising any right within said city on the part of said water works company under their articles of incorporation, filed in the Onondaga county clerk's office March 12, 1885. This order is granted upon the following grounds:

1st. That such grant is illegal.

2d. That it would — a violation of an existing contract between the parties.

3d. That it would deprive the plaintiff of valuable franchises granted it by the statutes of this State and guaranteed to it by the defendant.

4th. That the granting of such right would irreparably damage the plaintiff.

5th. That the exercise of such right would endanger the public health of said city.

Let defendant show cause before me, Justice Kennedy, at the court-house, in Syracuse, on the 28th day of March inst., at 10 o'clock, why this order be not continued till the final judgment of the court herein.

Dated the 23d day of March, 1885.

GEO. N. KENNEDY,
Jus. Sup. Court.

322 Supreme Court.

THE SYRACUSE WATER COMPANY
against
THE CITY OF SYRACUSE.

The above-named defendant, answering the complaint herein, admits that the plaintiff is a domestic corporation, organized and incorporated under the laws of the State of New York, and doing business at the city of Syracuse under the name of "The Syracuse Water Company;" that the defendant is a domestic corporation organized as in the complaint mentioned, and that the mayor and aldermen of said city are municipal officers thereof.

Further answering, the defendant denies each and every other allegation in the complaint contained.

II.

For a second and further answer to the complaint, the defendant alleges that by chapter 176 of the laws of 1821 the freeholders and inhabitants of the village of Syracuse were authorized to take a supply of fresh water for the use of said village from any spring on the land of the people of the State of New York lying eastward of said village, and to carry the same in an underground aqueduct across the land of said people to said village, and to enter on the same, to dig ditches for the laying of said aqueducts, and to repair the same from time to time, when necessary, with as little injury to said lands as might be; that said freeholders and inhabitants of said village were authorized to elect three trustees, who were empowered to transact all business in relation to the rights
323 thereby granted to the inhabitants of said village; to bring in the water, regulate the manner of using it, fix the sum to be obtained annually by those using the same, and to sue for all injuries to the works erected under said act. Provision was also made for the election of successors to said trustees annually. Said trustees were required to select the springs from which they intended to take such water, and to cause a map to be made of the same, with the route indicated thereon by which they intended to carry the same to said village, which map was to be filed in the office of the surveyor general of the State.

It was further provided that the Legislature should have the power at all times to modify, amend, or repeal said act; that thereafter, by chap. 124 of the laws of 1825, it was provided that all the rights, property, and powers of the trustees of the Syracuse water works above referred to should be vested in the village of Syracuse, which was incorporated by the said act, subject to the obligations and duties imposed upon said trustees, which duties were thereafter to be exercised by the trustees of the village of Syracuse; that thereafter, by chap. 236 of the laws of 1829, it was provided that the

trustees of the village of Syracuse should have the power to convey to one Oliver Teall, his heirs and assigns, all the rights, property, and powers of the trustees of the Syracuse water works as vested in said village for the term of twenty years; that subsequently, by chap. 151 of the laws of 1834, the trustees of said village of Syracuse were empowered to convey to said Oliver Teall, his heirs or assigns, all the rights, property, and powers of the trustees of
324 the Syracuse water works vested in said village for the term of thirty-five years from April 22, 1834, and the said Teall was authorized to exercise the privileges granted by chap. 176 of the laws of 1821, and was required to distribute water to such places as the trustees might direct.

It was further provided that the trustees of said village should have the power at the expiration of said thirty-five years to reinvest themselves and take possession of said water works and all appurtenances thereto belonging by paying for said water works and appurtenances at the necessary cost of erecting the same, deducting the decrease in their value by reason of their waste and decay by time and use, and providing further that in case of a failure to agree upon such value the same was to be determined by appraisers to be appointed by the supreme court; that under and by virtue of the provisions of the said act said Teall entered upon and operated the water works theretofore belonging to the village of Syracuse and by it acquired from the trustees of the Syracuse water works, said water being obtained from springs lying east of the village of Syracuse.

That said Teall continued to operate said works, making a large profit therefrom, until 1849, when he associated with him-self a number of other persons, who together, by chap. 224 of the laws of 1849, became incorporated as the Syracuse City Water Works Company; that said corporation was authorized to acquire real estate and to take water from such springs, ponds, fountains, or streams which might be approved of by the common council of the city of Syracuse, and to divert and convey the same to the said city, and
325 to lay pipes, conduits, aqueducts, wells, reservoirs, and other works necessary or proper for such purpose. They were also authorized, subject to such regulations as the common council of the city of Syracuse might prescribe, to lay pipes, conduits, and aqueducts in the streets, lanes, and public squares of said city, being required, however, to leave the same in the same condition, as nearly as might be, as they were before such entry. The said company was also required, whenever requested, to furnish water to the common council of the city of Syracuse, for extinguishing fires and other purposes, upon such terms as might be agreed upon between the said common council and said company, and, in case of a failure to agree upon the compensation for the water furnished or by said city requested to be furnished, commissioners were to be appointed by the supreme court to prescribe the terms upon which the water should be furnished.

It was also provided that nothing in said act contained should impair or interfere with the rights and privileges acquired by the

city of Syracuse under chap. 176 of the laws of 1821, and it was provided that the common council of said city of Syracuse should have the right at any time after the expiration of twenty years to resume all the property rights, powers, and privileges of the said Syracuse City Water Works Company, on paying to said company the amount of the capital stock actually paid in and expended in said works, with fifteen per cent. annually thereon, deducting therefrom the actual profits annually received by said company; that thereafter the plaintiff succeeded to the rights of said Syracuse
326 Water Company, and legislative authority was obtained to increase the nominal amount of the capital stock of said company to the sum of $1,000,000.

That on the 8th day of November, 1847, upon the application of said Oliver Teall, the trustees of the then village of Syracuse passed the following resolution:

"Resolved, That Oliver Teall and any other person who do or may hereafter represent the Syracuse Water Works Company, their representatives and assigns, may hereafter introduce into the village water from any spring or springs which they or any of them may select, subject to the usual conditions of not permitting the streets to be injured by their operations, nor unnecessarily incommoding the public, and provided also that the water introduced shall be better than that now introduced."

That thereafter, on July 5th, 1848, upon the application of said Teall, the following resolution was adopted by the common council of said city of Syracuse:

"Resolved by the common council of the city of Syracuse, That Oliver Teall or any other person who do or may represent the Syracuse Water Works Company, their representatives and assigns, may hereafter introduce into and distribute through said city water from the Furnace brook, so called, subject to the conditions mentioned in resolutions passed by the trustees of the village of Syracuse the 8th day of November, 1847, in relation to the streets, and that the said Teall and his representatives aforesaid be at liberty to charge and receive the same compensation for the use of said water as he is authorized to charge for water now introduced from other sources.

327 That after the passage of chapter 224 of the laws of 1849, upon the application of said Syracuse City Water Works Company, the said common council adopted the following resolution:

"Whereas the Syracuse City Water Works Company proposes to bring in and distribute through said city for use the water of Furnace brook, so called, in the town of Onondaga, in pursuance of the act incorporating said company: Therefore

"Resolved by the common council of said city, That we approve of the quality of said water and of the same being brought in by the said company aforesaid.

"Resolved by the common council of the city of Syracuse, That the Syracuse City Water Works Company be required in all cases when they shall remove any pavement in said city for the purpose

of constructing their water works that the same shall be done and again relaid by an experienced and skillful man in constructing pavements, and that all such excavations and relaying the same shall be so done as to leave the streets, as near as may be, in the same permanent and finished condition as it was before any such excavation, and that said company so construct their said water works through said streets as to prevent all leaks in said streets."

That the foregoing are all the legislative and municipal grants and authority, powers and franchises, given to or acquired by the plaintiff or its predecessors; that the said Oliver Teall and the organizers of said company commenced the construction of said works with an original capital which did not exceed the sum
328 of $10,000, and all moneys that have since been invested in said works by any of the stockholders thereof has consisted entirely of the earnings of said company out of the city of Syracuse and its inhabitants, so that the original investment of $10,000 has become developed into a capital stock of more than $700,000, upon which during a number of years past said company has paid annual cash dividends of six per cent., aggregating many hundreds of thousand dollars; that said company and its predecessors, taking advantage of the fact that they had no competitors in supplying water to the city of Syracuse, have during the past forty years in every manner taken advantage of their position and of the necessities of the said city and its inhabitants. The supply of water furnished by them has been inadequate. They have never supplied with water the elevated portions of the city, upon which are erected some of the most valuable residences and buildings in said city, and which have always been without adequate protection against fire, and which the plaintiff and its predecessors have always been unable to supply and provide for.

The said plaintiff and its predecessors have not only failed in providing a sufficient quantity of water, but the quality of the water furnished has been unwholesome, impure, and oftentimes disgusting. It has been tested chemically and otherwise and has been condemned as unfit for use. At the present session of the Legislature a report has been submitted by the physician of the State board of health which severely criticizes the water supply of the plaintiff and attacks it as being deleterious to the public health. It is so
329 hard that it cannot be used for domestic purposes, and is impregnated with mineral substance to such an extent as to make it in every way undesirable. During the past thirty years complaints by the public have been very numerous and continuous. Committees have been frequently appointed to investigate the evil, and protests have been made so frequently as to become unheeded by the plaintiff and its predecessors. Not only has the water supply of the plaintiff been insufficient in quantity and objectionable in quality, but the said plaintiff has year after year become more and more inordinate in its demands upon the city of Syracuse and the public. In 1851 the said city paid to the plaintiff for all the water furnished to it by said plaintiff for all municipal purposes the sum of $2,000, and since that time the amount paid has gradually

increased, so that during the past three years the defendant has been compelled to pay the sum of $26,000 per annum for the water furnished to it, and during the past year, the contract between the plaintiff and defendant having expired, the former has demanded that it be paid the sum of $40,000 per annum for the use of said water, so insufficient in quantity, so inadequate for the wants of said defendant, and so unwholesome in its quality; that not only has the said company been guilty of such exactions from the defendant, but its extortions from private consumers have been in a like proportion, so that in many cases during the past few years the rates have increased more than fivefold.

The defendant further alleges that during all this time, for the purpose of preventing the defendant from resuming the control and ownership of the rights, powers, privileges, and property of
330 said company, the said company has so kept its books of account that all expenses for repairs of every name and nature have been charged upon an account known as the construction account, upon which interest has been compounded year after year in such a manner and upon such a plan as to make it appear that the cost of the said works has been greatly out of proportion to the actual cost of construction, and upon the basis of such fraudulent book-keeping said water company has "watered" or, in other words, increased its capital stock to a sum nominally in excess of $700,000, and said Syracuse Water Company now claims and insists that the defendant shall not have the right to resume the property of said Syracuse Water Company unless it pays to said company upon said "watered" stock, amounting nominally to over $700,000, the amount of said "watered" stock, with fifteen per cent. annually thereon, deducting therefrom the actual profits annually received by said company. This at the present time amounts to a sum exceeding $2,000,000, and if paid by the city would secure to it water works in many respects old and dilapidated, in every respect objectionable, and utterly inadequate to the wants of a growing city.

The defendant further alleges that all of the matters above alleged have for many years been well known to the plaintiff; but, shielding itself behind its hateful monopoly, it has refused to accede to any of the reasonable demands made by the defendant and its citizens for a correction of these abuses. Aware of these facts, a number of gentlemen incorporated themselves under the laws of the State of New York made in that behalf, under the name
331 of the Central City Water Works Company, for the purpose of accumulating, storing, conducting, selling, furnishing, and supplying water for domestic, manufacturing, municipal, and agricultural purposes to the city of Syracuse and its inhabitants and to adjacent villages; and, it being necessary for said company, in order to construct its works and to enable it to supply the defendant and its inhabitants with pure and wholesome water, that said company should secure the right of laying its mains, pipes, and conduits in the streets of said city and to construct aqueducts and other structures, and to make excavations in the streets of said city, for the purpose of acquiring such right said company presented a petition to

the common council of the city of Syracuse, praying that it be granted the privilege of building, constructing, and operating water works in the city of Syracuse and to lay down pipes and water mains through the streets, avenues, and alleys of said city; that a resolution was thereafter introduced in said common council providing for the making of such grant and affixing the conditions which it was deemed prudent to require for the protection of the said city of Syracuse and its inhabitants; that a copy of said resolution is hereto annexed, marked "A;" that the said defendant and its common council and its various officers carefully considered the said resolution, and proposed to take such action thereon only as would best subserve the welfare of the city of Syracuse and its inhabitants, and did not threaten to take away any right, grant, privilege, or franchise owned or possessed by the plaintiff; that the common council of said city, being by its charter of said city invested with
332 the legislative power conferred upon the defendant, intended to exercise said power prudently and in good faith and with no purpose or intent to infringe upon any of the legal rights of the plaintiff or of any other person; that the granting of the privileges specified in said resolution would not deprive the plaintiff of any of its legal rights, and if the construction of new water works would have the tendency of decreasing the value of the plaintiff's property such decrease would only be occasioned by the wrongful acts, misdoing, and extortions theretofore practiced by the plaintiff, and would be the natural consequences resulting from honest and healthy competition, which would enure to the benefit of the general public.

The defendant further alleges that the public health of the inhabitants of the city of Syracuse would not be endangered or impaired by the digging up of the streets of said city for the purpose of laying down mains or hydrants, but, on the contrary, a more abundant water supply would aid greatly in flushing the sewers of said city and thereby be a benefit to the public health.

Further answering, the defendant alleges that the said resolution hereto annexed adequately provides for the restoration of the streets of the city of Syracuse to their former condition of usefulness, and the said Central City Water Works Company has tendered to the defendant a bond, in the penal sum of $50,000, conforming with the third section of said resolution and executed by sureties justifying in the sum of $510,000; that, notwithstanding the fact that the plaintiff now takes so great an interest in the public health
333 and in the condition of the streets of the city of Syracuse, it has been a notorious fact that the said plaintiff, although required to restore all streets wherein it makes excavations to the former condition of usefulness, *it* has failed to do so and has greatly disfigured the streets of said city and caused to the defendant great and lasting damage.

Wherefore the defendant prays for judgment dismissing the complaint, with costs.

EDWIN S. JENNEY,
City Attorney, No. 2 Granger Block, Syracuse, N. Y.

STATE OF NEW YORK, }
County of Onondaga, } ss:

Thomas Ryan, being duly sworn, says that he is the mayor of the defendant, The City of Syracuse; that said defendant is a municipal corporation, and deponent therefore makes this verification.

Deponent further says that he has read the foregoing answer and knows the contents thereof; that the same is true of his knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

THOMAS RYAN.

Subscribed and sworn to before me this 28th day of March, 1885.

GEORGE McGOWAN,
Justice of the Peace.

334 Supreme Court.

SYRACUSE WATER COMPANY }
against
THE CITY OF SYRACUSE. }

The issues of this action having been brought on for trial at a regular adjourned special term of the supreme court, held at the city of Syracuse, N. Y., on the 30th day of June, 1885, and the respective parties having submitted their proofs and allegations, and after duly considering the same and the arguments of the respective counsel, I do hereby make the following findings of fact and conclusions of law:

Findings of Fact.

First. This action was commenced by the service of the summons and complaint. The service was made on Thomas Ryan, the mayor of the city of Syracuse, personally on the 23d day of March, 1885, at 8.30 p. m. or thereabouts. The defendant appeared and answered the complaint, and the issue in the action was in that manner joined. Upon an order to show cause, the defendant appearing before Hon. George N. Kennedy, the injunction granted by him herein was duly continued until the hearing and determination of the action. This action was duly brought to trial at a regular adjourned special term of this court, held at the city of Syracuse, N. Y., on the 30th day of June, 1885, and thereafter duly submitted on argument for the decision of the court.

Second. By chapter 176 of the laws of 1821, entitled An
335 act to supply the village of Syracuse with wholesome water, passed March 27, 1821, the Legislature of the State of New York authorized the freeholders and inhabitants of the then unincorporated village of Syracuse to take a sufficient supply of fresh water for the use of the said village from any springs on the lands of the people of the State of New York in the town of Salina, lying eastward of said village, and to carry the same in an underground aqueduct across the lands of the people to the village, and at all times to enter upon the same, to dig ditches for the laying of said

aqueducts, and to repair the same when necessary with as little injury to the said lands as may be. Provision was also made for the election of three trustees by the freeholders and inhabitants of the village on the first Monday of May in each year, whose duty it was to transact all business in relation to the rights granted by said act to the inhabitants of the village to bring in the water and to regulate the use thereof and the charges for using the same, as more fully appears by said statute, which is hereby made a part of this finding.

Third. Under the authority thus conferred the inhabitants of the said village elected trustees to select the springs from which they intended to take said water, and which were situated easterly of their village and in the eastern part of the present city of Syracuse, and said trustees proceeded to supply the inhabitants of said village with water until 1825, when, by chapter 124 of the laws of that year, the village of Syracuse was incorporated, and by the terms of its charter all the rights, property, and powers of the trustees of the Syracuse water works were vested in the village corporation, subject
336 to the obligations of such trustees, and it was provided thereafter the duties enjoined on said trustees under the act of March 27, 1821, were to be exercised by the trustees of the village. Under the provisions of this act the trustees of the village exercised the duties imposed upon them and furnished water for the village and its inhabitants from said springs lying eastwardly of the village until the year 1834.

Fourth. Thereafter, by chapter 151 of the laws of 1834, the trustees of the village of Syracuse were empowered to convey to one Oliver Teall, his heirs or assigns, all the rights, property, and powers of the trustees of the Syracuse Water Works Company as were vested in the village by its charter for a term of thirty-five years from and after the passage of said act, and the said Teall, his heirs or assigns, were declared to be thereafter possessed of all the powers, rights, and privileges which were granted in and by the act passed March 27, 1821, and of all the powers of the village with reference to that subject, and the said Teall, his heirs, executors, administrators, and assigns, were authorized to exercise in his or their own name or names all the privileges granted by said act, he being required to distribute the water to such places as the trustees might direct, but not being required to account for the money received by him from said works. The act also provided that the said Teall, his heirs or assigns, were authorized to charge for the use of the water, and that in case the said Teall, after receiving the conveyance of the said rights, powers, and privileges, should neglect to exercise them the trustees of the village were given the right, after two years' notice,
to resume all the rights, powers, and privileges thereby
337 granted. It was further provided that the trustees of the village should have the power at the expiration of 35 years to reinvest themselves and take possession of said water works and all appurtenances thereunto belonging by paying at the time of the taking possession thereof, estimating the water works and their appurtenances at the necessary cost of erecting such works, deducting the decrease in their value by reason of their waste and decay by

time and use, and that in case said trustees and said Teall or their representatives could not agree upon such value the same should be ascertained by three disinterested appraisers to be appointed by the supreme court of the State at the instance of either party, as more fully appears by said statute, which is hereby made a part of this finding.

Fifth. On June 8th, 1841, under the authority of said act of April 22, 1834, and a resolution passed by the board of trustees of the village of Syracuse, the trustees of said village duly conveyed to said Oliver Teall, his heirs or assigns, all the right, property, and power of the trustees of the Syracuse Water Company as were vested in said village for a term of thirty-five years from April 22, 1834, with the powers, rights, and privileges of said act and subject to the conditions and limitations therein described, and said Teall thereafter exercised the powers and privileges granted to him by said conveyance and conveyed a portion of his interest in said property to one Ira Seymour, with whom he owned the same in common, the said Teall holding $\frac{5}{6}$ and the said Seymour $\frac{1}{6}$ of said property.

338 Sixth. That thereafter and on December 14, 1847, the village of Syracuse was incorporated as a city by chapter 475 of the laws of 1847, and was empowered to make, establish, publish and modify, amend and repeal ordinances, rules, regulations, by-laws for various purposes, among others to exercise all the power conferred upon them by the charter of the city in relation to highways, the prevention of fires, the levying of taxes, the supplying the village with good and wholesome water, and other subjects of municipal regulation. By said act it was also provided that the same rights, duties, obligations, and requirements as were held by the trustees of the village of Syracuse at the time of the passage of said act of incorporation or as were imposed upon them in relation to Oliver Teall as to supplying the city of Syracuse with pure and wholesome water should be conferred upon said common council, as more fully appears from said statute, which is hereby made a part of this finding.

Seventh. On April 5, 1849, the Legislature of the State of New York, by chapter 224 of the laws of 1849, incorporated the Syracuse Water Works Company, authorizing it to have a capital stock of $60,000, providing for the election of directors and officers, specifying the manner in which the business of the corporation should be performed, authorizing the said corporation, for the purpose of supplying the city of Syracuse with pure and wholesome water, to purchase, take, and hold any real estate necessary for the purpose, and by their directors, agents, servants, or other persons employed to enter upon the lands of any person or persons which might be necessary for that purpose, and to take water from any springs, ponds, fountains, or streams which might be approved of by the com-

339 mon council of the city of Syracuse, and to divert and convey the same to the said city, and to lay and construct any pipes, conduits, aqueducts, wells, reservoirs, or other works or machinery necessary or proper for that purpose upon any lands so entered upon, purchased, taken, or held; but said company was not authorized,

unless by the consent of the owner or person entitled thereto, to take and divert any water from any spring, pond, fountain, or stream within the city of Syracuse. Said corporation was also authorized to enter upon any land, stream, highway, roads, lane, or public square through which they might deem it proper to carry the water from said springs, etc., and to lay and construct any pipes, conduits, aqueducts, or other works for that purpose, provided they leave said lands, streets, highways, roads, lanes, and public squares in the same condition as nearly as they might be in before said entry, as appears more fully by said statute, which is hereby made a part of this finding.

Eighth. Provision was also made authorizing the corporation, in case of failure to agree with the owner or occupants of any lands or water intended to be taken or used for the purchase or use thereof, *may* apply to the supreme court for the appointment of commissioners to ascertain and determine the compensation to be paid, and the proceedings before and appeal from the determination of such commissioners were regulated. The act also provided that in laying pipes, conduits, or aqueducts or constructing or erecting works in the streets, lanes, or public squares of the city of Syracuse the company should conform to such regulations as the common
340 council should prescribe, as appears more fully by said statute, which is hereby made a part of this finding.

Ninth. By section 16 of said act, as subsequently amended by chapter 104 of the laws of 1851, it was provided that the company should, when requested, furnish water to the common council of the city of Syracuse for extinguishing fires and other purposes upon such terms as might be agreed upon between the said common council and the company, and, in case they could not agree, that either said common council or said company might apply to the supreme court in the manner provided in said act for the appointment of three commissioners, who should prescribe the terms upon which water should be furnished, and said company should furnish water upon the terms so prescribed for a period of three years, at the expiration of which time a new commission might be applied for by either the common council or the company, and thereafter once in three years like application might be made. By section 19 of the act it was provided that nothing in said act should be deemed or taken to affect or impair or interfere with the rights, privileges, or obligations of the city of Syracuse derived or imposed by or under the act of March 27, 1821, or any act subsequently passed amending or altering said last-mentioned act, as appears more fully by said statute, which is hereby made a part of this finding.

Tenth. By section 27 of said act the charges of the company for providing consumers were regulated, but by chapter 71 of the laws of 1865 said section was repealed.

341 Eleventh. At the time of the passage of the said act of 1849, at the instance of the common council of the city of Syracuse, which was dissatisfied with the charter of said water company as originally drafted, which was deemed to be oppressive towards the city, sections 26 and 29 of said act were inserted. Section

26 of said act provides that in case the company should not go on and furnish a sufficient supply of good and wholesome water for the use of the city and the people thereof within two years of the passage of said act, and shall fail to continue to furnish a sufficient supply the common council of said city might give six months' notice to said company to furnish the same, or that application would be made to the supreme court for the appointment of commissioners as provided in the act, and in case such company should neglect to furnish such supply until the expiration of said notice, then the property of the company should be appraised in the manner provided in said act, and upon the payment by the common council to the company of the sum so determined the common council should become the owners of said property so appraised and paid for, and should be possessed of all the powers given by that act. By section 29 the common council of the city of Syracuse were given the right at any time after the expiration of 20 years to resume all the property, rights, powers, and privileges of the Syracuse City Water Works Company on paying to it the amount of capital stock actually paid in and expended in its works, with 15 per cent. annually thereon, deducting therefrom the actual profits annually received by the company, and on such resumption and payment by said common council all the rights, property and privileges, and
342 powers of said company were to vest absolutely in the common council of the city of Syracuse, and the company was to convey to it all its property in said water works, as appears more fully by said statute, which is hereby made a part of this finding.

Twelfth. Thereafter, on July 3, 1849, Oliver Teall and Ira Seymour conveyed to the said Syracuse City Water Works Company all their property and rights in the water works conveyed to said Teall by the trustees of the village of Syracuse, and thereafter said company acquired, by purchase or otherwise, new springs, and constructed reservoirs, conduits, and water mains, and from that time to the present time it and its successors have supplied the city of Syracuse and its inhabitants, to the extent which their works permitted, with water for municipal and domestic purposes; that the springs and water supply originally constructed in the eastern part of the city, and which were conveyed to said Teall by the trustees of the village, and by him and his assigns to the Syracuse City Water Works Company, were abandoned at about the time of the incorporation of said company.

Thirteenth. That thereafter the city of Syracuse paid to the said water works company for the water supply, to wit, for fire and other purposes, large sums of money under contract from 1851 until 1868, and thereafter by virtue of awards of commissioners appointed under the provisions of section 16 of said act of 1849; that under the contract of 1851 the said city paid to the water works company the sum of $2,000 per annum; that said sum increased from year to year, until at present and for a number of years past the sum
343 paid by the city of Syracuse to the said water works company for the use of said water for fire and other purposes has been the sum of $26,000 per annum.

Fourteenth. That the water works company has not constructed water mains in all of the streets in said city, but, as appears from a chart belonging to the plaintiff, which was introduced in evidence, a large portion of the streets of said city are not supplied with water mains and a large portion of the city is without water supply, so far as the plaintiff is concerned, and is without protection against fires.

Fifteenth. That the water system of the plaintiff is unable to supply the elevated portions of the city of Syracuse, lying in the Fourth and Eighth wards thereof, with water for domestic or fire purposes.

Sixteenth. That a portion of the water mains of the said plaintiff consist of sheet-iron piping and cement, and are inadequate for the purpose for which they are intended, and have a tendency to impair the efficiency of the water supply of the plaintiff for fire and other purposes.

Seventeenth. That by various acts of the Legislature of the State of New York the said water works company was authorized to increase its capital stock from the sum at first of $60,000 to $150,000, from $150,000 to $300,000, and from $300,000 to $1,000,000, and the capital stock of said company now consists of $440,000; that the greater portion of said capital stock consists of stock dividends issued from time to time by said company, upon which for a number of years past cash dividends at the rate of six per cent. per annum have been paid by said company.

344 Eighteenth. That by chapter 370 of the laws of 1879 the name of said Syracuse City Water Works Company was changed to the Syracuse Water Company.

Nineteenth. That the period for which the compensation was fixed which the city of Syracuse was to pay the plaintiff for the water supply by it to the city for extinguishing fires and other purposes expired in July, 1884, and thereafter negotiations were commenced between said company and the city of Syracuse for a contract for the ensuing three years; that the said parties, however, failed to agree upon said contract on account of the demand made by the plaintiff that the said city should pay it for the water so supplied the sum $40,000 per annum.

Twentieth. The said plaintiff at present supplies water to the city for the purpose of extinguishing fires and other purposes at between 300 and 325 hydrants; that said hydrants are furnished by the city of Syracuse.

Twenty-first. During the period of its corporate existence the plaintiff has largely supplied private consumers within the city of Syracuse with water, and as its business increased and its existing sources of supply were deemed by it insufficient to answer all the requirements of the public the plaintiff extended its works and constructed and acquired new sources of supply and constructed new reservoirs and water mains, but it wasn't induced or led to make such improvements or the expenditures incident thereto by any promise, representation, or inducement made or offered by the city of Syracuse.

Twenty-two. By the revised charter of the city of Syracuse,
345 passed February 21, 1885, and being chapter 26 of the laws

of 1885, the common council of the city of Syracuse is empowered to make, establish, publish, modify, ordain, amend, or repeal ordinances, rules, regulations, and by-laws for various purposes, among others to light the streets and public buildings of the said city, and to supply the city with water, and to regulate the opening of street surfaces, and the laying of the gas and water mains, as appear more fully from the statute, which is hereby made a part of this finding.

Twenty-third. By the provisions of chapter 85 of the laws of 1880 and chapter 386 of the laws of 1884 the various cities of the State, with the exception of a number expressly specified, which do not include the city of Syracuse, are authorized to permit the water companies organized under said acts to use the streets, squares, avenues, and public places of said cities for the purpose of laying their water mains and pipes, and to supply said cities with water, and to enter into contracts with said water companies for the purpose of obtaining a supply of water from them for the purposes specified in said acts.

Twenty-four. That on the 12th day of March, 1885, the defendant, The Central City Water Works Company, was duly organized and incorporated in conformity with the act of the Legislature of the State of New York, passed on the 17th day of February, 1848, entitled "An act to authorize the formation of incorporations for manufacturing, mining, mechanical, or chemical purposes," and the several acts of the Legislature amendatory thereof and supplemental thereto, and with the act of said Legislature passed March
31, 1880, entitled "An act supplemental to chapter 40 of
346 the laws of 1848, entitled An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," and the amendments made thereto, known as chapter 85 of the laws of 1880, and the acts amendatory thereof and supplemental thereto, for the purpose of supplying the city of Syracuse, N. Y., and adjacent villages with pure and wholesome water for domestic use, for fire protection and other public purposes, and for the purpose of accumulating, storing, selling, furnishing, and supplying water in said city and adjacent villages for domestic, manufacturing, municipal, and agricultural purposes.

Twenty-five. That said corporation duly applied to the common council of the city of Syracuse for its consent to construct water works and to lay water mains, conduits, aqueducts upon the streets and public squares of said city for the purposes of its incorporation; and thereafter, on the 23d day of March, 1885, the said common council duly passed the resolution annexed hereto and marked Schedule A, which resolution, after being duly certified by the city clerk of said city of Syracuse, was on said 23d day of March, 1885, duly approved by the mayor of said city.

Twenty-six. That thereafter and on the 4th day of April, 1885, the said Central City Water Works Company duly filed with the city clerk of the city of Syracuse its written acceptance of said resolution, duly acknowledged by its president, whereby it accepted the said resolution and the grants, franchise, and privileges thereby

conveyed and therein expressed and described, and also accepted and assumed the performance of all the conditions and pro-
347 visions contained in said resolution which are required to be observed or performed by it.

Twenty-seven. That the said Central City Water Works Company has duly entered upon the performance of the conditions specified in the said resolution, and has commenced its surveys for the purpose of constructing its works, and has otherwise incurred expenditures of money for that purpose.

Twenty-eight. That on the 27th day of May, 1841, the board of trustees of the village of Syracuse, N. Y., duly and legally passed resolutions authorizing a conveyance from the village of Syracuse to Oliver Teall, pursuant to the several acts of the Legislature, and that the following are the resolutions:

SYRACUSE, *May* 27, 1841.

The trustees met Thursday, May 27, 1841, at 8 p. m., pursuant to an adjournment.

Present: Hiram Putnam, president; Thomas T. Davis, William Barker, Elisah George, Johnson Hall, trustees.

On motion,

Resolved, That a deed be executed to Oliver Teall, pursuant to an act of the Legislature of the State of New York, entitled "An act to supply the village of Syracuse with wholesome water," passed March 27, 1821, and pursuant to amendments of said acts, passed April 23, 1829, April 22, 1834.

On motion,

Resolved, That Thomas T. Davis be, and he is hereby, appointed a committee to make out the deed as directed in the above resolution.

W. M. CLARK, *Clerk.*

348 Twenty-nine. That by a provision in the 9th section of the act of 1834 it was provided that "the trustees of the village of Syracuse shall have power at the expiration of thirty-five years to reinvest themselves and take possession of said water works and all appurtenances thereunto belonging by paying at the time of so taking possession thereof, estimating said water works and appurtenances at the necessary cost of erecting such works, deducting the decrease in their value by reason of their waste and decay by time and use."

Thirty. That the village of Syracuse never did reinvest themselves of said water works, nor did said village or its trustees ever offer to pay for or take possession of the same in any manner, under said act or otherwise.

Thirty-one. That the defendant, The City of Syracuse, is a domestic municipal corporation, duly and legally organized under the laws of the State of New York by chapter 475, passed December 14, 1847, and that said city succeeded to all of the rights, powers, and obligations of the said village in reference to the supply of water; that Thomas Ryan is now and for two years last past has been the acting mayor of the defendant, The City of Syracuse.

Thirty-two. That in and by the charter of the city of Syracuse all acts and parts of acts relating to the supplying of the village of Syracuse with wholesome water, and any act done, privilege granted, right accrued or established under any former act in relation to that subject were expressly reserved and excepted from the repealing clause of said charter; and it was expressly declared by said
349 charter of the defendant city that every such act, privilege, right, and location shall remain as valid and effectual as if said acts had remained in force, and that the same rights, duties, obligations, and requirements as are now held by the trustees of the village of Syracuse, or imposed on them in relation to Oliver Teall as to supplying the said village with pure and wholesome water, shall be conferred and imposed upon the said common council of the defendant city.

Thirty-three. That the trustees of the village of Syracuse, shortly before its incorporation as a city, to wit, Nov. 8, 1847, and the common council of the city of Syracuse, shortly after being incorporated, to wit, July 5, 1848, adopted resolutions recognizing, confirming, and granting to said Oliver Teall and his associates, then called the Syracuse Water Works Company, the right to go to Furnace brook and any sources of supply, wherever situated, in order to supply Syracuse with wholesome water, and that at all times afterwards the said company acted upon said resolutions and expended very large sums of money in procuring and furnishing such supply from said sources.

Thirty-four. That the plaintiff is a domestic corporation duly and legally organized under the laws of State of New York by chapter 224 of the laws of 1849, entitled "An act to incorporate the Syracuse City Water Works Company," passed April 5, 1849, and the several acts amendatory thereof, and that the name of the company now is and since 1879 has been "The Syracuse Water Company," and that its present capital stock is $440,000, which is divided into
350 shares of $50 each; that its bonded indebtedness is $200,000, and that the same is outstanding and unpaid, and the said company and its directors are heavy tax-payers in the city of Syracuse, the defendant corporation; that said charter incorporated the previous unincorporated company, and the new company succeeded to all the rights, duties, and obligations of the old company.

Thirty-five. That before the passage of the plaintiff's charter the terms of the same were duly submitted to and agreed upon by the common council of the defendant city and water works company, the plaintiff's assignors and grantors, after suggestions and amendments were duly made, and the same was adopted by the city, defendant, with full knowledge of what the charter contained and upon the written recommendation of the said common council, thereto given and made.

Thirty-six. That said charter expressly provides that "for the purpose of supplying the city of Syracuse with pure and wholesome water" that it might condemn lands and real estate and take and hold the same and bring water into said city from any springs, ponds, fountains, or streams which may be approved of by the com-

mon council of said city, and that said water might be diverted from its source and conveyed into the city, and that said plaintiff might construct and lay pipes, conduits, aqueducts, wells, reservoirs, or water works or machinery necessary or proper for said purposes; that by said charter the plaintiff's grantors were the persons recognized as the owners of the said water works company then supplying the city of Syracuse with water; that by said charter it
351 was further expressly provided that said plaintiff should on request furnish to the common council of said city water for extinguishing fires — for other purposes.

That subsequently and on the 21st day of April, 1851, after the construction of plaintiff's works, the common council did, in writing and by a resolution of that date duly and legally passed by them, request the plaintiff to furnish the said city with water for fire and other purposes, pursuant to section 16 of the plaintiff's charter, and that the plaintiff thereupon commenced to furnish and has ever since continued to furnish the same, without interruption, to the present time under and in accordance with said request, and that the price of furnishing said water has been paid by said city except since July 1st, 1884.

Thirty-seven. That under and by said charter it is further provided as follows:

Chapter 224, section 26:

In case said company shall not go on and furnish a sufficient supply of good and wholesome water for the use of said city and the people thereof within two years from the passage of this act, and continue to furnish sufficient supply, the common council of said city may give six months' written notice to said company to furnish the same, or that application will be made to the supreme court for the appointment of five commissioners, as provided in the tenth section of this act; and in case said company shall continue to neglect to furnish said supply until the expiration of said notice, then the property of said company shall be appraised in the manner provided in said tenth section; and upon the payment by said common
352 council to said company of the sum so determined, then the said common council shall become the owners of said property so appraised and paid for and be possessed of all the powers given by this act to the said company.

Thirty-eight. That the plaintiff is furnishing about 4,000,000 gallons of water daily to the city and its inhabitants, and that it has water power and capacity to furnish 10,000,000 gallons per day if required to do so by the common council and the inhabitants of said city.

Thirty-nine. That, under the direct sanction and directions of the common council and with their approval and consent and upon their visiting and inspecting, all of the water brought into said city has been brought in and distributed by the plaintiff, and that no notice, in writing or otherwise, has ever been served upon the plaintiff or its officers or agents that the same was not satisfactory, pure, and wholesome, or that the supply was not good and sufficient in quality and quantity.

Forty. By the revised charter of the city of Syracuse, passed March 3, 1857, and being chapter 63 of the laws of 1857, the common council of the city of Syracuse was empowered to make, establish, publish, modify, ordain, amend, or repeal ordinances, rules, regulations, and by-laws to light the streets and public buildings of the city and to supply the city with water.

Conclusions of Law.

I.

That the plaintiff, The Syracuse Water Company, never
353 acquired an exclusive right to supply the city of Syracuse or its inhabitants with water or to use the streets for the purpose of laying its mains and conduits or of enjoying a monopoly with reference to the water supply of the city.

II.

The defendant, The City of Syracuse, is not estopped by any act done or performed by it from granting to the defendant, The Central City Water Works Company, the right to construct water works within the city for the purpose of supplying the corporation and the inhabitants of Syracuse with water.

III.

That the defendant, The Central City Water Works Company, is not estopped from accepting the franchise created by the resolution passed by the common council of the city of Syracuse on March 23, 1885.

IV.

The common council of the city of Syracuse had the right and power of granting to the Central City Water Works Company the franchise contained in the resolution passed by that body upon March 23, 1885.

V.

The right was conferred upon the Central City Water Works Company by said resolution — March 23, 1885, of laying its water mains and conduits in the streets, avenues, highways, and public squares of said city and of constructing reservoirs and conduits and of maintaining water works within the city of Syracuse.

VI.

The complaint in this action should be dismissed against
354 the city of Syracuse, with costs, and the injunction heretofore granted herein against said defendant vacated and dissolved.

P. C. WILLIAMS, *J. S. C.*

("Schedule A" annexed, printed above, Exhibit 1, page 88.)

Supreme Court.

SYRACUSE WATER COMPANY
against
THE CITY OF SYRACUSE. } Judgment, Sept. 11, 1885.

This action having been brought to issue by the service of an answer on behalf — the defendant herein to the complaint herein, and the issues joined having been brought to trial at a special term of the supreme court, held at the city of Syracuse, N. Y., and the respective parties having presented their proofs and exhibits and submitted their case to the court for decision, and the court having duly filed its decision herein, now, therefore, in conformity with said decision, and after hearing Forbes, Brown & Tracy, and Hon. George F. Comstock for the plaintiff and Louis Marshall for the defendant, it is—

Adjudged and decreed that the plaintiff, The Syracuse Water Company, never acquired an exclusive right to supply the city of Syracuse or its inhabitants with water or to use the streets for the purpose of laying its mains or conduits or to enjoy a monopoly with reference to the water supply of the city. It is further—

355 Adjudged and decreed that the defendant, The City of Syracuse, is not estopped by any act done or performed by it from granting to the Central City Water Works Company the right to construct water works within the city for the purpose of supplying the corporation and inhabitants of Syracuse with water. It is further—

Adjudged and decreed that the common council of the city of Syracuse had the right and power of granting to the Central City Water Works Company the franchise contained in the resolution passed by that body on March 23, 1885. It is further—

Adjudged and decreed that the right was conferred upon the Central City Water Works Company by said resolution of March 23, 1885, of laying its water mains and conduits in the streets, avenues, highways, and public squares of said city and of constructing reservoirs and aqueducts and of maintaining water works within the city of Syracuse. It is further—

Adjudged and decreed that the complaint in this action should be dismissed, and that the defendant, The City of Syracuse, have judgment against the plaintiff, Syracuse Water Company, for $74.13, costs and disbursements, and that the said defendant, The City of Syracuse, have execution therefor, and that the injunction heretofore granted herein be, and same is hereby, vacated and dissolved.

GUSTAVUS SNIPER, *Clerk.*

(Endorsed:) Filed Sept. 11, 1885, at 12 m.

356 Supreme Court.

THE SYRACUSE WATER COMPANY, Appellant,
against
THE CITY OF SYRACUSE, Respondent.

GENTLEMEN: Take notice that the appellant above named appeals to the supreme court at general term from the judgment of the supreme court herein entered in the clerk's office of the county of Onondaga on the 11th day of September, 1885. The appellant intends to bring up for review on such appeal said judgment and each and every part thereof.

Dated September 16th, 1885.

Yours, &c., FORBES, BROWN & TRACY,
Attorneys for the Appellant.

To the clerk of the county of Onondaga and to Edwin S. Jenney, Esq., attorney for the city.

STATE OF NEW YORK, *Onondaga County*, } *ss:*

I, Gustavus Sniper, clerk of said county and of the supreme and county courts therein, which are courts of record, do hereby certify that I have compared the two foregoing copies of judgment-rolls, the case and exceptions, exhibits, and two notices of appeal to the general term with the originals thereof now remaining on
357 file or entered in this office, and that the same is a correct transcript from such originals and of the whole of said originals, with the endorsements thereon.

In witness whereof I have hereunto set my hand and seal this 29th day of October, 1885.

G. SNIPER, *Clerk.* [L. S.]

Supreme Court, Onondaga County.

SYRACUSE WATER COMPANY
against
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY. } Opinion.

Two actions brought to procure an adjudication as to the rights and privileges of plaintiff under certain statutes and alleged grants by the city and to restrain the city from granting the defendant company and the defendant company from exercising any right, power, privilege, or franchise to dig up the streets of the city and lay pipes therein to furnish water to the city and its inhabitants. The plaintiff claims it has the exclusive right, power, privilege, and franchise to furnish water to the city and its inhabitants, subject to the rights of the city to take the water works of plaintiff into its possession upon paying plaintiff therefor. It is not claimed the city has attempted or desires to possess itself of plaintiff's water works, but the city claims the right to grant another franchise to the defendant

company and to contract with it to furnish the city with water and permit it to compete with plaintiff in furnishing water to the
358 inhabitants of the city. The real question is whether the franchise of the plaintiff is an exclusive one.

In 1821 Syracuse was an unincorporated village, and for the purpose of enabling it to supply itself with wholesome water the Legislature passed chapter 176 of the laws of that year, whereby it provided, in "§ 1, that the freeholders and inhabitants of the village be authorized to take a sufficient supply of fresh water for the use of the village from any springs on the land of the people of the State in the town of Salina, lying eastward of said village, and to carry the same in an underground aqueduct across the lands of the people to the village, and at all times to enter on the lands, dig ditches for laying aqueducts, and to repair the same from time to time when necessary;" and, in "§ 2, that the freeholders and inhabitants of the village authorized to vote at town meetings are hereby authorized to meet and elect three trustees, who shall be empowered to transact all business in relation to the rights hereby granted to the inhabitants of the village to bring in the water, regulate the manner of using it, fix the sums to be paid annually by those using it, to sue in their own names as trustees of the Syracuse water works for all injuries to the works erected under this act, and generally with all powers necessary to carry the purpose of this act into effect, and thereafter to meet and elect three trustees for each ensuing year;" and, in section 5, "that it shall be the duty of the trustees to select springs from which they intend to take water and cause a map to be made of same, with route which they intend to carry same in an
359 aqueduct to the village, and filed in the office of surveyor general of the State, and all sales of land by the State thereafter made embracing such springs or the route of such aqueduct shall be deemed to be subject to the privileges granted in and by this act, which shall be deemed a public act;" and, in section 4, "that the Legislature shall have power at all times to modify, amend, or repeal this act."

In 1825 the Legislature incorporated the village of Syracuse by chapter 124 of the laws of that year, whereby it provided, in "section 11, that all the rights, property, and powers of the trustees of the Syracuse water works be and are vested hereby in the (village) corporation, subject to the obligations of the said trustees, and the several duties enjoined on said trustees in and by the act of 1821 aforesaid shall be exercised by the trustees of said village." In 1834 the Legislature amended the act incorporating the village of Syracuse by chapter 151 of the laws of that year, whereby it provided, in section 9, "the trustees of the village shall have power to convey to Oliver Teall, his heirs or assigns, all the rights, property, and powers of the trustees of the Syracuse Water Works Company as vested in the village by section 11 of the act hereby amended for the term of thirty-five years from and after the passage of this act, and the said Teall, his heirs and assigns, shall thereafter be possessed of all the powers, rights, and privileges which are granted in and by the act of 1821 and of all the powers of said village in reference to that sub-

ject by virtue of this act and the act hereby amended, and
360 the said Teall, his heirs, executors, administrators, and assigns, may exercise in his or their own name or names all the rights and privileges granted by said act, and *she* shall distribute the water to such places as the trustees may direct, but it shall not be necessary for him or them during the said term of thirty-five years to elect said three trustees or to account for the money to be received by him or them from said works, as in and by said act is provided. In case said Teall, after receiving the conveyance of said rights, powers, and privileges, shall neglect to exercise them the trustees of said village, after two years' notice, shall have the right to resume all the rights, powers, and privileges hereby granted: Provided, That the sum which the said Teall, his heirs or assigns, shall charge for the use of said water shall not exceed $5 for a private family, $10 for a boarding-house, and $20 for a tavern a year: And provided further, That the trustees of said village shall have power, at the expiration of said 35 years, to reinvest themselves and take possession of said water works and all appurtenances thereto belonging by paying at the time of so taking possession thereof, estimating said water works and appurtenances at the necessary cost of erecting such works, deducting the decrease in their value by reason of their waste and decay by time and use: And provided further, That in case said trustees and said Teall or his heirs, executors, administrators, or assigns cannot agree upon the value thereof the same shall be ascertained and determined by three disinterested appraisers, to be appointed by the supreme court of this State at the instance of either party." Thereafter, pursuant to
361 the provisions of the act of 1834, and on the 8th day of June, 1841, the trustees of the village of Syracuse executed and delivered to Oliver Teall their conveyance, subsequently recorded in Onondaga county clerk's office in Book 81, Deeds, page 231, &c., wherein they recited the provisions of the act of 1821, and that the freeholders and inhabitants of said village referred to in the act of 1821, in pursuance of said act, duly appointed trustees for the purpose and in the manner in said act mentioned, and said trustees thereupon selected such springs as they intended to take water from, and caused a map and their declaration thereon to be made, signed, and filed as required by said act of 1821, and recited the provisions of § 11 of the act of 1825, incorporating the village of Syracuse, and recited the provision of the act of 1834, and whereby, for a valuable consideration, the said trustees conveyed to said Oliver Teall, his heirs and *or* assigns, "all the rights, property, and powers of the Syracuse Water Works Company as vested in the village of Syracuse by the § 11 of the act (of 1825), being the same powers conveyed to the trustees of the said Syracuse Water Works Company or to the freeholders and inhabitants of said village by the act (of 1821) above referred to and recited for and during the unexpired portion of the term of 35 years from and after (the date of passage of act of 1834)," and whereby the trustees authorized "the said Teall, his heirs or assigns, to do, make, and perform any act in relation to the said right, property, and powers of said company which the said trustees might

lawfully do and perform by virtue of § 11 of the act (of 1825), subject to the restrictions and provisions of said act (of 1834)
362 above recited," and whereby it was expressly declared that such conveyance was subject to all the restrictions and reservations contained in the acts of 1821 and 1834." After the execution and delivery of the conveyance to Teall the Legislature, in 1842, amended § 9 of the act of 1834 by chap. 108 of the laws of that year, whereby it provided Teall might charge for the use of the water not exceeding $10 per annum for a private family, $20 per annum for a boarding house, and $40 per annum for a tavern.

In 1847 the Legislature incorporated the city of Syracuse by chap. 475 of the laws of that year, whereby it provided, in "§ 7, sub. 31, title 3, the common council shall have power to make, establish, publish and modify, amend, and repeal ordinances, rules, regulations, and by-laws for the following purposes (and among other things), to exercise all powers conferred on them by this act in relation to the supplying the village with good and wholesome water," and in "§ 12, title 10, the same rights, duties, obligations, and requirements as are now held by the trustees of the village of Syracuse, or imposed on them in relation to Oliver Teall, as to supplying the village of Syracuse with pure and wholesome water, shall be conferred and imposed upon the common council," and in "§ 18 this act is declared to be a public act," and in "§ 19 the Legislature may alter, modify, or repeal this act."

In 1849 the Legislature incorporated the Syracuse City Water Works Company by chapter 224 of the laws of that year, whereby it provided, "§ 1, that Teall, Seymour, Wilkinson, White, and Furman and all such persons as may hereafter be associated with
363 them are constituted a body corporate;" in "§ 2, that the capital stock shall be $60,000, in shares of $50 each;" in "§ 3, that a majority of the persons named in § 1 shall meet and apportion and distribute the shares of stock to the persons who may be the owners of the water works company now furnishing the city of Syracuse with water according to their existing interests, and shall also ascertain the cost of the property belonging to said water works company and the respective interests of the several persons comprising said company, and upon their conveying all their rights and interests and property in that company to this corporation at the value so determined the same shall be considered and taken as so much paid in on the several shares or on such shares as they may deem proper, which, according to this §, shall be distributed to the several proprietors of said water works company;" in "§ 8, that for the purpose of supplying the said city of Syracuse with pure and wholesome water, said company may purchase, take, and hold any real estate necessary for the purpose, and may enter upon the lands of any person which may be necessary for that purpose, and may take the water from any springs, ponds, fountains, or streams which may be approved of by the common council of said city and direct and convey the same to said city, and may construct any pipes, conduits, aqueducts, wells, reservoirs, or other works or machinery necessary or proper for said purpose upon any lands so entered upon, pur-

chased, taken, or held: Provided, however, the said company shall (not without the consent of the owner or person entitled to
364 the use thereof) be authorized to take or direct any such water from any spring, pond, fountain, or stream within the city of Syracuse. Said company may enter upon any lands, streets, highways, roads, lands, or public squares through which they deem it proper to carry the water from said springs, fountains, ponds, streams, wells, and reservoirs and lay and construct any pipes, conduits, aqueducts, or other works for the purpose, leaving the said lands, streets, highways, roads, lanes, and public squares in the same condition, as nearly as may be, as they were before said entry, but shall not, within the bounds of the said city of Syracuse, lay and construct said pipes, conduits, aqueducts, and other works through any private garden, court, yard, or building lot without the written consent of the owner thereof." In §§ 9, 10, 11, 12 it provided for ascertaining and paying compensation to the owners of lands, etc., so taken, and in § 13 it provided the land, etc., so taken should be held by the company and its successors forever; in "§ 16, that said company shall, when requested, furnish water to the common council of the city of Syracuse for extinguishing fires and other purposes upon such terms as may be agreed upon between the said common council and said company, and in case they cannot agree either said common council or said company may apply to the supreme court for the appointment of three commissioners, who shall prescribe the terms upon which water shall be furnished, and said company shall furnish water upon the terms so prescribed for the period of three years, at the expiration of which time a new commission may be ap-
365 plied for by either the common council or the company, and thereafter once in three years a like application may be made." In "§ 19, that nothing in the act shall be deemed or taken to affect or impair or interfere with the rights, privileges, and obligations of the city of Syracuse derived or imposed by or under the act (of 1821) or any act altering or amending the same." In "§ 26, in case said company shall not go on and furnish a sufficient supply of good and wholesome water for the use of the said city and the people thereof within two years from the passage of this act, and continue to furnish a sufficient supply, the common council of said city may give six months' written notice to said company to furnish the same, or that application will be made to the supreme court for the appointment of five commissioners; and in case said company shall continue to neglect to furnish said supply until the expiration of said notice, then the property of said company shall be appraised, and upon the payment by said common council to said company of the sum so determined, then the said common council shall become the owners of said property so appraised and paid for and be possessed of all the powers given by this act to said company." In "§ 29, that the common council of the city of Syracuse shall have the right at any time after the expiration of twenty years to resume all the property, rights, powers, and privileges of the said company on paying the company the amount of capital stock actually paid in and expended in said works, with 15 per cent.

annually thereon, deducting therefrom the actual profits an-
366 nually received by the company; and on such resumption and payment by said common council all the said property, rights, privileges, and powers of said company shall rest absolutely in the common council of the city of Syracuse, and the company shall, by an instrument in writing duly executed by the president and secretary of said company, convey to said common council all the property of the company in said water works." After the passage of this act and in 1849 all persons having an interest in the water works then furnishing the city of Syracuse with water conveyed all their said interests, rights, and property to the company so incorporated. The Legislature in 1879, by chap. 370 of the laws of that year, § 2, changed the name of the company so incorporated to "The Syracuse Water Company." Various amendments have been made from time to time to the acts heretofore quoted, many of them unimportant to the question here being considered. Pursuant to the statutes and under the provisions thereof, during all the years since the water works were first established (which was very likely in or immediately after 1821, though the proofs hardly indicate), water has been supplied to the inhabitants, the village, and the city. The action of the village and city during all these years, with reference to the supply of water, is shown in the case by the introduction of the resolutions passed by the board of trustees of the village and by the common council of the latter. In March, 1885, the defendant water company was organized and incorporated under the act for the incorporation of manufacturing, mining, mechanical, and chemical companies, passed by the Legislature in 1848, as
367 amended by chapter 85 of the laws of 1880, the objects stated in its articles of association for which the company was formed being "To supply the city of Syracuse, N. Y., and adjacent villages with pure and wholesome water for domestic use, for fire protection, and other public purposes, and for the purpose of accumulating, storing, selling, furnishing, and supplying water in said city and adjacent villages for domestic, manufacturing, municipal, and agricultural purposes." Its capital stock was to be $2,000,000 and its place of business the city of Syracuse. Thereafter, on March 23, 1885, upon application of the defendant water company, theretofore made and considered, the common council of the city of Syracuse passed a preamble and resolutions reciting the incorporation of the defendant water company and the objects of such incorporation and the necessity that such company should secure the right of laying its mains, pipes, and conduits in the streets of the city, and of constructing aqueducts and other structures and making excavations in the streets of the city, and that it was deemed for the best interests of the city that defendant water company's system of water works should be adopted and a more abundant supply of a pure and wholesome character should be furnished to the city and its inhabitants from other sources than those from which the then present water supply was derived, and that these portions of the city unsupplied and without adequate protection against fire should enjoy the advantage of an adequate water supply, and there should be a press-

ure of water to meet the increasing requirements of the city, and resolving and ordaining that the defendant water company,
368 its successors and assigns, be authorized and empowered to construct and operate water works in the city and all necessary appurtenances for purpose of supplying the city with pure and wholesome water, suitable and sufficient for all domestic, manufacturing, and fire purposes; to lay down pipes and mains for the purpose of conveying water through the streets, avenues, and alleys of the city, and to acquire and hold, as by law authorized, such real estate, easements, and water rights as might be necessary for that purpose; to use the streets, avenues, alleys, bridges, and public grounds while laying or repairing such water works; to receive, purify, conduct, and distribute water through the city; to erect and maintain all necessary machinery, &c.; that defendant company should not be permitted to assign or transfer any franchise, rights, or privileges acquired under these resolutions to any water company then existing in the city of Syracuse, or its successor, or to any other water company without the permission of the mayor and common council; that the defendant company should not unnecessarily obstruct any street, alley, avenue, or public ground, and properly repair and make good any gas or sewer pipe that might be disturbed, complete their work without incurring delay, and restore streets, alleys, avenues, and public grounds and sidewalks, guard any excavation in streets and sidewalks, and protect city against suits for damages by reason of injuries received from such excavations, and execute bond, with sureties to be approved by common council, for performance of the conditions; that the water supply should be from Skaneateles, Oneida, or Cazenovia Lakes, or Tully
369 ponds, and such as would be pronounced pure and wholesome upon analysis by the State board of health, and approved by the mayor and common council of the city of Syracuse before the construction of the water works should be commenced; that the works, mains, reservoirs, and machinery should be sufficient to readily supply the city with at least 12,000,000 U. S. gallons of water each day and a pressure at certain points of 70 pounds per square inch, and at others of 60 pounds per square inch; that defendant company should at its own expense place upon its pipes 520 double-nozzle non-freezing fire-hydrants of the most approved pattern, located not more than 500 feet apart, at points to be designated by the common council; that the city might at any time require the defendant company, *as* it successors or assigns, to make extensions to their pipe system, provided it shall order the erection of fire-hydrants thereon at the rate of ten to the mile; that said defendant company should during the full term and continuance of the grant supply water free of charge, from such suitable attachments as the city of Syracuse should make, for the fire-department buildings, city offices, and public schools, sixteen watering troughs with automatic closing apparatus, and three public fountains, and water from all the hydrants for flushing gutters and sewers; when city should deem it necessary for sanitary purposes, on notice to company at its office, such flushing was to be done; and for sprinkling streets, delivered

through special hydrants or stand-pipes erected by the city and connected with the main pipe; that said city should reserve right
370 to and agree to adopt and refuse ordinances protecting the company in safe and unmolested enjoyment of the franchise and against fraud and imposition, injury to property, waste of water, and the protection of the source of supply; and said company should also have power to adopt and enforce reasonable regulations, which it might require all persons taking water from its mains to subscribe as a condition of its furnishing them water; that the city agreed to rent for 20 years the right to use the water supplied by the company at 520 hydrants and such additional ones as might be ordered, and to pay therefor at the rate of $50 per hydrant per annum, and the company should agree the city should have the right for the 20 years to the use of the water from the 520 hydrants and such further ones as should be so ordered, and said company should keep all the hydrants supplied with water for fire service and keep the hydrants in effective working order and proper repair at its own expense; that said defendant company should commence construction of its works, mains, &c., within three months after the acceptance of the grant, and diligently and with no unnecessary interruption prosecute the work and complete at least 40 miles of pipe and be ready to supply water therefrom for domestic, manufacturing, and municipal purposes within three years from the date of such acceptance; but any delay caused by injunctions or orders of court or malicious interference should work an extension of time equivalent to the time thus lost, provided such delay be in no manner caused by the company or any one in collusion with it; and if that condition should not be complied with by the company the common council might rescind the grant and terminate the rights and privileges con-
371 ferred; that the city at any time after five years from the passage of the resolutions should have the right to acquire title to the works by proceedings similar to those provided for by the general railroad act, regulating the condemnation of real estate; that said defendant company, within 90 days after the approval of the resolutions, file with the city clerk its written acceptance thereof, duly acknowledged, and in default of such acceptance all rights of the company under the resolutions should cease; that the rates for use of water by private consumers should be in accordance with a schedule therein contained, and for purposes not specified in the schedule rates should be subject to agreement between parties, provided that the maximum rates to be charged by the company should in no case be greater than those then charged by any other water company doing business at the city of Syracuse or those that might be charged by any other private water company doing business at any other city in the State having an equal or greater population than the city of Syracuse. These resolutions were on the same day duly approved by the mayor of the city of Syracuse; and thereafter and on the 4th day of April, 1885, the defendant company duly filed with the clerk of the said city its written acceptance of the resolution, duly acknowledged by its president, and of the grant,

franchise, and privileges thereby conferred, and assumption of the conditions and liabilities connected therewith. The first of these actions, the one in which the city of Syracuse alone is a defendant, was commenced on the same day the resolutions were passed and approved. The other action was begun after the defendant
372 company had filed its acceptance aforesaid and had commenced the performance of the work under the resolution. It had secured and opened offices in the city of Syracuse and begun surveys for the work, and the work is suspended by reason of the injunction issued and served at the time this action was begun, and the object of these actions is to obtain a perpetual injunction against the construction and operation of the new water works.

G. A. FORBES,
W. G. TRACY, AND
G. F. COMSTOCK,
For Plaintiffs.
E. S. JENNEY AND
L. MARSHALL,
For Defendants.

WILLIAMS, *J.:*

I have not assumed in the foregoing statement of facts to refer to all that are material in the disposition of the case. The facts are so voluminous, though fortunately uncontradicted, that it is difficult to state or refer in detail to all of them in any opinion of ordinary length. I have examined all the statutes and resolutions, contracts, and other evidence and have given such force to each and all as seems to me proper. It seems to me these cases are to be determined by a construction of the statutes under which the rights of the plaintiff are claimed. It is said it would be inequitable to interfere with plaintiff's business, as the defendants are seeking to do, after so much money has been expended and invested by it. Still the rights of the city and its inhabitants should be considered as well as those of the plaintiff. Some little evidence
373 has been given as to the adequacy of the water supply as furnished by the plaintiff, but neither party has thought it material to go into detail upon this subject, or to investigate the character of the water furnished by the plaintiff. While it appears some considerable part of the city is wholly unsupplied with water, the the plaintiff claims it is not in fault as to this, but is ready and willing to extend the works whenever the city will perform its duty in the premises, and it is said if the city is not satisfied with the plaintiff's water supply it may take the works into its own custody and under its own control. The reply to this suggestion is, first, that the city does not desire to incur the liability or have the responsibility necessarily resulting from such course; second, that under the statute existing it would be a very expensive property for the city to purchase. In the act of 1834 it was provided after 35 years the village might take the works into its possession by paying the value thereof, estimating same at the necessary cost of erecting same, deducting decrease in their value by reason of waste and decay

by time and use, to be agreed upon, or found by appraisers appointed by the court, while by the act of 1849, incorporating plaintiff, the city would have to pay the amount of cipital stock actually paid in and expended in the works, with 15 per cent. annually thereon, deducting the actual profits annually received by the company. There are also provisions for obtaining possession of the property by reason of the failure to furnish water supply, or sufficient or proper water supply, in the acts of 1834 and 1849. The amount of capital stock paid in, with interest annually at 75
374 per cent., less profits as they are claimed to have accrued, would make the works now pretty expensive, and, moreover, it is not entirely certain the works, or some portion thereof, at least, are such as the city needs or desires. There are, at least, so many of these questions which have not been fully developed by the evidence in the case that I do not feel that the court should attempt to settle any alleged equities between the parties. It does not seem to me that there is any estoppel in equity shown in the case sufficient to induce the court to interfere to protect the plaintiff in the exercise of an exclusive right or franchise to supply the city and its inhabitants with water. It is said the city and its inhabitants have permitted the plaintiff year after year to invest and expend its moneys in enlarging and extending its works and pipes and should not now be permitted to allow another company to come in competition with plaintiff, though the franchise of the plaintiff may not, as a matter of law, be exclusive. It may be said, however, the plaintiff, when it invested and expended its money understood its legal rights, or at least acted under the law as it was. It might have expressly provided for an exclusive franchise if the city or the State would consent to it, and if — did not or could not do so, and still chose to go on with its investment and expenditure, it did so with its eyes open, and the court ought not to do or attempt to do now for the plaintiff what the city or State did not or would not do, especially if by so doing the city is to be injured or its inhabitants are to suffer. The plaintiff had a right, if its franchise was not exclusive, to do as it has done—invest its money, enlarge its property and works,
375 and to furnish additional supply of water as the needs of the city seemed to require, and the city and its inhabitants had the right to and could take and use the water without thereby, even in equity, making the franchise exclusive, which otherwise would not have been so.

Business of various kinds is carried on by individuals and corporations with the same danger before them, that when they shall have invested large sums of money and constructed large works and extended their property other and competing individuals and companies may set up the business in the immediate locality and thus compel them to improve their facilities, the quality of their materials furnished, to reduce their rates or prices—in short, more fully and more cheaply serve their patrons than they were obliged to do before the competition came about; and in a case where there is no exclusive right in law to carry on the business the court could hardly be called upon to hold competition in abeyance so as to pro-

tect the business already established and being carried on. Assuming plaintiff's legal rights are not exclusive, and that legally the city has the power to allow a competing company to be established in Syracuse, I hardly see why the court should, under any pretence of exercising equitable powers, enjoin the city from granting and the defendant company from exercising the right and franchise of constructing competing water works. It is said a part of the resolutions passed and approved is, in effect, a contract by the city with the new company to furnish it water for twenty years, and that it, the city, has a perpetual contract with plaintiff to furnish it
376 water which it proposes to violate. If the city has made such a contract, and the plaintiff is and remains willing to carry out the contract on its part, it can at law recover the contract price, whether the city takes the water or not, and needs no aid of the equitable powers of the court in the premises. This perpetual contract and right by plaintiff to furnish the city water is claimed to exist under and by virtue of section 16 of the act of 1849, incorporating plaintiff. I can hardly assent to the proposition that any perpetual contract or right exists under that section, unless the plaintiff's franchise is legally an exclusive one, and am inclined to the opinion that the city may certainly at the end of any three years referred to in the section discontinue the use of the water, and will thereupon be released from the obligation longer to pay therefor; but it is very likely unnecessary to decide this question, because if the right existed perpetually, as claimed, to furnish the city water the remedy at law to recover compensation therefor is adequate and no aid of the court in equity is needed. The question remains, then, whether the franchise of the plaintiff is an exclusive one under the statute passed by the Legislature and the dealings between the city and the plaintiff. I assent readily, as I did upon the argument, to the proposition that whatever rights were acquired by Teall under the act of 1834 and the conveyance to him in pursuance of said act are now possessed and owned by the plaintiff; that no subsequent acts of the Legislature have assumed to or could deprive Teall or his assigns of the rights thus acquired. The inquiry remains what the rights so acquired by Teall
377 were? Were they exclusive or not? At the very threshold of this inquiry stands the fact that in none of the acts of the Legislature is it expressly stated that the rights of Teall are exclusive in their nature, and the suggestion will naturally force itself upon us, if it was intended to be exclusive why was it not so expressly stated? I refer, of course, not to the right to take water from particular springs but its right to furnish or supply the village, city, and inhabitants with water. This being so, the question arises, what rule of interpretation of the statutes is to be adopted? The plaintiff claims the acts should be construed so as to carry out the intention which is fairly to be inferred from all the acts of the Legislature and the dealings between the parties; that they should be construed according to their meaning and not according to their letter, and that the intent must be implied and held to have been to grant an exclusive franchise, while, on the other hand, the defendants claim

that the rights acquired under these statutes were in the nature of public grants by the Legislature, and that the rule is well established that public grants are to be strictly construed against the grantee; that legislative acts granting franchises are to be construed strictly according to their terms, and the grantee takes nothing by implication, either against the power making the grant or others. The senior counsel for plaintiff upon the argument expressly admitted this rule of construction of statutes in the nature of public grants, and the authorities seem abundant to support it; but it was said by such counsel for plaintiff the rule was not applicable here.

I am unable, however, to see why it is not so applicable.

378 Many of the authorities cited by counsel for defendants seem to me peculiarly applicable to this case. In the leading case in England (Proprietor Stourbridge *vs.* Wheely, 2 Barn. & Adol., 793) a canal company was incorporated by act of Parliament. All persons had the right to navigate the canal, but the company had right to exact toll for articles that passed the locks. Nothing was said in the act as to tolls for navigating the levels between the locks. It was held the company had no right to demand tolls for navigating the levels; that the right could not be implied; that the contract between the company and the public must be gathered from the tenor of the act, and any ambiguity in its tenor must operate against the company and in favor of the public, and that the company could claim nothing that was not clearly given by the act. In the leading American case (Charles River Bridge *vs.* Warren Bridge, 11 Peters, 400) the Legislature of Massachusetts in 1650 granted Harvard College right to dispose of ferry over Charles river, between Charlestown and Boston. The college retained ferry until 1785, when the Legislature incorporated plaintiff to build a bridge over the river where ferry stood, giving it the tolls on condition it pay to Harvard College $200 annually during charter, seventy years; then bridge was to become property of State. The bridge was built and tolls received until 1828, when the Legislature incorporated defendant to erect another bridge between same places over same river, about 800 feet from plaintiff's bridge, which bridge of defendant's was to become free after a few years, and at time of trial had become free. Travellers were thereby led to cross over defendant's bridge.

379 Plaintiff lost tolls and the value of its franchise was destroyed. The Supreme Court of the U. S. held the rule of construction here stated should be adopted; that there was no exclusive privilege given plaintiff in the river above or below their bridge; no right to erect another bridge themselves nor prevent other persons from erecting one; no engagement by the State another bridge should not be erected; no undertaking not to sanction competition, not to make improvements that might diminish the amount of plaintiff's income from its bridge. Upon all these questions plaintiff's charter was silent. No words were used from which an intention to grant any of these rights could be inferred. If plaintiff was entitled to any of them it must be implied simply from the nature of the grant, and could not be inferred from any words used in the act; that none of the facilities or franchises granted to plaintiff were revoked

by the grant to defendant; plaintiff's rights to take tolls remained unaltered; in short, all the franchises and rights of property enumerated in the act and those granted remained unimpaired, but its income was destroyed by the Warren bridge, which, being free, drew all the passengers and property and rendered plaintiff's franchise of no value; that in order to entitle plaintiff to relief it was necessary to show the Legislature contracted not to do the act of which complaint was made; that it impaired or violated that contract by its grant to defendant. If any such contract existed it must be gathered from implication; it could not be found in the words used, and in charters of this description no rights were taken from the public or given to a corporation beyond those which
380 the words of the charter, by their natural and proper construction, purport to convey; that there were no words which imported such a contract, and none could be implied; that the whole community were interested in this inquiry and had a right to require that the power of promoting their comfort and convenience and of advancing the public prosperity by providing safe, convenient, and cheap ways for the transportation of produce and the purposes of travel should not be construed to have been surrendered or diminished by the State unless it should appear by plain words that it was intended to be done. This is very forcible and significant language, and is important in its application to some features of the case, especially to the claim made by plaintiff that the court should protect plaintiff's interest and property from the injury likely to be produced by the granting of the new franchise to the defendant company. The fact that such injury would result, even to a total destruction of its business and property, would not seem under this authority to be sufficient reason for construing the statutes so as to make the franchise exclusive or for restraining the exercise of the new franchise granted.. In Miller *vs.* St. Clair Co., 8 How: U. S., 584, the court held the rule was that if the meaning of the words be doubtful in a grant designed to be a general benefit to the public they should be taken most strongly against the grantee and for the Government, and therefore should not be executed by implication in favor of the grantee beyond the natural and obvious meaning of the words employed, and if these do not suggest the right claimed it must fall. In Mohawk Bridge Co. *vs.* Utica & Schenectady R. R. Co., 6 Paige, 554, the court in this
381 State held that the grant to a corporation of the right to erect a toll bridge across a river without any restriction as to the right of the Legislature to grant a similar privilege to others did not deprive a future Legislature of the power to authorize the erection of another toll bridge across the same river so near to the other as to divert a part of the travel which would have crossed the river over the first bridge if the last had not been erected; that grants of exclusive privileges, being in derogation of public rights belonging to the State and its citizens generally, must be strictly construed. In Fort Plain Bridge Co. *vs.* Smith, 30 N. Y., 44 it was held that it was competent for the Legislature, after granting a franchise to one person or corporation which affected the right of the public to

grant a similar franchise to another person or corporation, the use of which would impair or even destroy the value of the first franchise, though the right to do so was not reserved in the first grant unless the right to do so was expressly prohibited by the first grant, and it has also been held that the grant of the right to use a public street for running a railroad is not to be deemed exclusive in character unless the statute expressly so makes it. (9 Ave. R. R. Co. *vs.* N. Y. E. R. R. Co., 3 Abb. N. C., 347; 6 Ave. R. R. Co. *vs.* G. E. R'w'y Co., 3 Abb. N. C., 372; Matter of N. Y. E. R. R. Co., 10 N. Y., 327.) In Mayor *vs.* By. & T. Ave. R. R. Co., 97 N. Y., 275 it was held the rule was well settled that any ambiguity in a grant of privileges must operate against the grantee and in favor of the public. These authorities seem to establish the principle that in construing statutes in the nature of public grants the strictest rules
382 of interpretation should be indulged against the grantee and in favor of the public. Nothing will be deemed to pass by implication, but only such rights will be created as the express words of the grant, according to their natural, obvious meaning, purport to convey. This principle of construction must govern the court in these cases in determining whether the grant to Teall and his successors and assigns was of an exclusive right and franchise or not. It is not attempted to take away from the plaintiff its rights and franchise to carry on its business, but only to grant and confer a similar right or franchise upon the defendant company to compete with plaintiff in furnishing and supplying water to the inhabitants of the city of Syracuse and the city itself. True, the city has entered into a contract with the defendant company to furnish and supply it with water for certain purposes and for a certain sum, but the city was never obliged by any of the grants to the plaintiff to take water from plaintiff; the plaintiff was obliged to furnish and supply the water upon request of the city. Then, again, the city may desire to take water for other purposes than those contracted for with the defendant company, and is at liberty during the twenty years to contract therefor with either company, and beyond the twenty years it may contract with either company most convenient and advantageous to itself for all its supply of water. The plaintiff must concede the principle of construction of the statutes in question as heretofore stated, and its claim must then be that these statutes, by express words, giving to them their ordinary and obvious meaning, did grant to Teall and his successors, the plaintiff, an exclusive right
383 to supply the village and city and their inhabitants with water. Going back to the act of 1821, we observe that the Legislature thereby granted to the inhabitants of the then unincorporated village the right to take water for their use from such springs belonging to the State in the town of Salina as they should select and convey it across the lands of the State to the village; and they were permitted to select three trustees to transact the business of furnishing this water supply, regulate the manner of using it, *fire* rates to be paid by those using it, and generally to do all things necessary to carry out the purposes of the act. I am unable to see how there was anything exclusive in the nature of this grant. Will it be claimed,

these works having been constructed, the inhabitants could not thereafter provide themselves with a supply of water from any other source? It was, it seems to me, simply a privilege conferred by the State which the village, through its trustees, might use or not, as it saw fit, and, having commenced its use, could discontinue when it chose or could use in connection with any other source of water supply it saw fit to obtain. Very likely the village obtained a prior right to use the water from the springs it selected, because by the § 3 of the act it was expressly provided that all sales of land by the State thereafter made embracing such springs or the route over which the water was conveyed to the village should be deemed to be subject to the rights granted by this act; but beyond this I find in the words of the act nothing whatever exclusive in the nature of the grant. By the act of 1825, incorporating the village,
384 the trustees of the incorporated village were substituted for the trustees under the act of 1821, and the rights theretofore vested in the inhabitants of an unincorporated village were vested in a corporate body, the village. No other change was made by this act. By the act of 1834 power was conferred upon the village corporation to transfer to Teall and his assigns the property, rights, and powers which the village acquired under the acts of 1821 and 1825. No new rights, powers, or franchises were created by this act, it seems to me. As a consideration for the transfer to him of valuable property, as well as valuable rights and powers, he was required to perform certain duties towards the village and its inhabitants, and provision was made for the recovery by the village from said grantee of the property, rights, and powers so to be conveyed at the option of the village, but I find nothing in this act making the right to supply the water exclusive in Teall or his assigns. Pursuant to this act the village thereafter executed and delivered to Teall the conveyance, and by its express terms the conveyance was of all the property, rights, and powers vested in the village by its act of incorporation, being the same granted in the act of 1821 by the Legislature to the unincorporated village, and authorized Teall to do all acts which the trustees under the act of 1821 could do, subject to the restrictions of the act of 1834. Now, in these acts and this conveyance there is no language expressly making these rights, powers, or franchises exclusive; nothing restricting the village to the use of this as its sole source of water supply. It seems to me if the right is to be deemed to have been exclusive it must be implied, cannot be
385 said to have been expressly conferred by the words used, giving them their natural and obvious meaning. The senior counsel for plaintiff, upon the argument, made the assertion that the right to supply or furnish water to the village and its inhabitants was necessarily exclusive from the very nature of the name. Why is it any more so than the right to supply gas, electric light, or the right to build bridges over a stream, or telephone lines, or railroads—horse or steam—in the streets or in a street? If there is any reason why it is so it is in the fact that the works and property are so expensive in construction and require the investment of so large an amount of money. Were it not for this consideration would it be claimed

several water companies might not exist and do business in the same city as well as several gas or other light companies or telephone companies or railroad companies? This seems to me to be the turning point in these cases, as I indicated at the final submission of the cases. If it be conceded these rights and powers acquired by Teall under these acts and this conveyance were exclusive and restrictive, then their character would seem to have adhered to them down through all the subsequent years and to be now of the same character in hands of plaintiff. All the argument of plaintiff's counsel beyond this would be unnecessary and would seem to be practically uncontroverted by the defendants. On the other hand, if these rights and powers possessed by Teall were not exclusive, then at what time or by what act of the Legislature or of the city did they become exclusive and restrictive, and why are they so now in the hands of plaintiff? Under the principle of construc-
386 tion heretofore referred to I am unable to see that Teall, after he received his conveyance, in 1841, was possessed of an exclusive or restrictive franchise. He was the owner of such property as had been constructed in connection with the works of the springs and the right to convey the water therefrom over the lands of the State to the village and of a right, under the restrictions of the acts and conveyance, to supply the village and its inhabitants with water from these springs. The village on its part had a right to recover possession of the property, if it desired, in certain contingencies and upon certain terms. Was it obliged to take its whole water supply from this source? Could it not get a part of its water supply from other sources if it saw fit? Suppose the next year after the conveyance was given the Legislature had conferred authority upon another person or corporation or the village itself to take a supply of water from another source, could Teall have restrained such attempt to establish an additional source of water supply? Under the authorities hereinbefore referred to I find nothing in the acts or conveyance to prevent it. It would not answer to say this second franchise would be likely to injure or even destroy the franchise and property of Teall. That would be no reason for holding a franchise exclusive or restrictive when the Legislature or the village had not seen fit, in the express words of the grant or conveyance, to make it so. If it was intended or desired to make the franchise exclusive or restrictive it was easy to say so. Not having expressly so provided, if there is doubt or uncertainty as to whether it was intended to be exclusive or restrictive the doubt or uncertainty must be resolved in favor of the
387 public and against Teall, and it would be held not to be exclusive or restrictive. It is said by Mr. Forbes, of counsel for plaintiff, that various subsequent acts of the Legislature and dealings between plaintiff and the village and city are all "an unbroken series of construction of the rights, powers, and privileges granted by legislative acts, conveyances, and resolutions to the plaintiff and accepted, entered into, and enjoyed by the city of Syracuse." I am unable to regard them as a construction in favor of plaintiff showing any exclusive rights or franchises. It is in

proof, for illustration, that when the Legislature was about to be asked to incorporate the water company plaintiff's conferences were held between the persons asking for the incorporation and the common council of the city. Objections were made by the latter to the provisions of the proposed charter and to the absence of provisions therein, and finally everything was agreed upon between the parties, and all united in requesting the passage by the Legislature of the act of incorporation. Did the parties then intend the rights of the plaintiff should be exclusive and restrictive? The law was well settled then, as it is now, that nothing passed by implication in public grants, and no rights were created except by express words. Why was it not distinctly stated in this charter of the plaintiff that its rights and franchises were exclusive? The most, if not all, of these alleged constructions are as consistent with rights and franchises not exclusive as with exclusive and restrictive ones. This silence in the plaintiff's charter upon this subject, however, is peculiarly suggestive against the plaintiff, because this charter
388 was the subject of peculiar consideration by the parties, and yet not a word is contained in it to the effect that plaintiff's rights and franchise were exclusive or restrictive. It is said by Mr. Tracy, of counsel for plaintiff, that the village and city of Syracuse was not given the power by any of its charters and had no power at the time these actions were commenced to supply themselves or their inhabitants with water except through the agency of the plaintiff; that the power could not exist without legislative sanction, and the Legislature never gave them this power. Whether such power existed under earlier statutes and charters or not I entertain no doubt but that under the revised charter of 1885, passed in February of that year, and other statutes passed before any of the acts complained of in the action were committed the city, by its common council, was given power adequate to this purpose, providing the rights and franchise of the plaintiff were and are not exclusive and restrictive. By § 2, title 1, it was provided, "The said corporation shall also have the powers and privileges conferred by the statutes of this State upon corporations as well as those conferred by this act," and by § 22, title 4, and subdivisions 2 and 7, it was provided, "The common council shall have power to make, establish, and ordain ordinances, rules, regulations, and by-laws to supply the city with water and to regulate the opening of street surfaces and the laying of water mains." In addition to this, by chap. 85 of the laws of 1880, under which the defendant company was incorporated, it was provided corporations might be formed for the purpose of supplying water for domestic, manufacturing, municipal,
389 and agricultural purposes, and the city of Syracuse not being excepted from the operation of the act it would be covered by the provisions thereof. Can it be said the city could not grant to the defendant company the right to lay its pipes and construct its works in the city when such company is incorporated under that act? Then, by chap. 386 of the laws of 1884, corporations might be formed for the purpose of supplying water for power and fire purposes, and it was therein expressly provided that any such cor-

poration "shall have power to lay its pipes and conduits through and under the streets, avenues, and highways of any city where it may be located with the consent of the municipal authorities of such city under such reasonable regulations and conditions as they may prescribe," and that such corporation "may contract with any city in which it may be located to furnish it water for the purposes therein stated." Under these statutory provisions and the general powers of cities I apprehend there can be no doubt but the city had power to make the arrangements for water works and supply of water for itself and its inhabitants with defendant company unless the rights and franchises of the plaintiff were exclusive and restrictive. Even if the Legislature by the earlier village and city charters did not confer this power, still, unless the plaintiff's rights were exclusive, it had the right to confer this power whenever it was inclined, and it clearly has done so by these later statutory provisions. After a somewhat extended examination of the facts, the statutes, the resolutions of the common council of the city of Syracuse, and
390 contracts and dealings between the city and plaintiff and between the village of Syracuse and the plaintiff and its predecessor, and consideration of the suggestions made and authorities cited by counsel, I have arrived at the conclusion that the franchise and rights of the plaintiff as to a water supply for the city and its inhabitants are not exclusive, and that the city and its inhabitants are not restricted to the supply of water furnished by the plaintiff, but might provide for any other, further, or different supply of water it desired at the time it made the arrangement it did with the water company defendant, and that plaintiff has no standing to prevent by injunction the granting by the city to defendant company and the enjoyment by the defendant company of the rights and franchise granted by the city to the defendant company by reason of any such exclusive rights or franchise in itself. I do not find anything in the terms of the grant to the defendant company or in the *character* of the company itself that leads me to think the court should interfere by injunction to prevent the enjoyment of this franchise by the defendant company. The resolutions, so far as I am able to judge, guard very carefully the rights of the city and its inhabitants. I am aware of no suggestion of counsel to the contrary. As to the defendant company itself, no evidence has been given tending to show it is not a proper company to be intrusted with the rights and franchise. They have given such bonds as the city required, and no evidence has been given attacking the company or its bondsmen in any way. Some severe language has been indulged in by counsel with reference to the company and its objects and purposes, but in the
391 absence of proof the court can hardly allow such suggestions by counsel to affect its decision. I am of opinion the complaints of the plaintiff in both cases should be dismissed, with costs, and the injunctions vacated and dissolved. At the special request of counsel, made in writing since the submission of the cases, I have examined these cases thus early, and perhaps more hastily than I should have done, except that neither party was likely to be content, if unsuccessful, with the decision of the trial court. There are

no disputed questions of fact in the cases, and if I am wrong in my conclusions no harm can come to plaintiff, but it can be fully protected by the courts on review. I have given these cases my best judgment and have intended to arrive at correct conclusions. Let decisions in the cases be prepared by counsel for defendants and submitted to counsel for plaintiff for examination, and after the examination by counsel of this opinion and such proposed decisions, if desirable, counsel may appear before me for a settlement and signing of the decisions.

392 *Laws of* 1870.

Chapter 545.

An act to authorize the city of Syracuse to provide by tax for the construction of a fire-alarm telegraph and to pay water rents.

Passed May 2, 1870.

SECTION 1. The common council of the city of Syracuse are hereby authorized to insert in the city tax levy for the year 1870, and to collect as other city taxes are collected, a sum, not exceeding fourteen thousand dollars, to provide a fire-alarm telegraph for said city, which sum shall be in addition to all other sums authorized to be raised in said city by taxation; and the sum hereby authorized to be raised or so much as may be necessary shall be applied *for* the purpose aforesaid.

§ 2. The common council of the city of Syracuse are hereby further authorized and empowered to add each year to the tax-roll of said city, and collect the same in the same manner as other city taxes are collected, such sums of money as the city shall become obliged to pay by virtue of any agreement which the said common council may make with the Syracuse City Water Works Company under existing laws for supplying the city of Syracuse with water for fire and other purposes.

§ 3. All acts and parts of acts inconsistent with the above are hereby repealed.

§ 4. This act shall take effect immediately.

393 *Laws of* 1876.

Chapter 443.

An act supplemental to the act entitled An act to revise the charter of the city of Syracuse, passed March 3d, 1857, and the acts amendatory thereof.

Passed June 2, 1876.

SECTION 1. The common council of the city of Syracuse shall have authority and are hereby empowered to raise by tax upon the property of said city in each year as follows:

For water dues, twenty-two thousand five hundred dollars or such

sum as may be awarded by commissioners duly appointed for the purpose.

(Here follows diagram marked page 393a.)

394 At a general term of the supreme court, held at the court-house, in the city of Utica, Oneida county, in and for the fourth judicial department of the State of New York, on the 20th day of April, 1886.

Present: Hon. George A. Hardin, presiding justice; Hon. Douglas Boardman, Hon. David L. Follett, associate justices.

THE SYRACUSE WATER CO., Appellant,
against
THE CITY OF SYRACUSE, Respondent.

Judgment affirmed with costs.
Opinion by Follett, J.
A copy.

F. D. HAAK, *Dept. Clerk.*

395 At a general term of the fourth department of the supreme court of the State of New York, held at the court-house, in the city of Utica, N. Y., on the 20th day of April, 1886.

Present: Hon. George A. Hardin, justice presiding; Hon. David L. Follett, Hon. John C. Churchill, associate justices.

Supreme Court.

SYRACUSE WATER COMPANY, Appellant,
against
THE CITY OF SYRACUSE, Respondent.

The plaintiff having heretofore appealed from the judgment rendered in the above-entitled action in Onondaga county clerk's office on the 11th day of September, 1885, dismissing the complaint herein with $74.13 costs, and said appeal having been duly considered by this court, after hearing Wm. G. Tracy, Esq., and G. A. Forbes, Esq., for the appellant, and Louis Marshall, for the respondent, it is—

Adjudged that the judgment so appealed from be, and the same is hereby, in all things affirmed with $72.13 costs and disbursements in favor of the defendant, The City of Syracuse, against the plaintiff, the said Syracuse Water Company, and that the defendant have execution therefor.

J. E. WELLS, *Clerk.*

(Judgment-roll endorsed:) Filed April 27th, 1886, at 4.20 p. m.

Court of Appeals.

SYRACUSE WATER COMPANY, Appellant,
ag't
THE CITY OF SYRACUSE, Respondent.

We hereby waive the execution of any undertaking upon the

part of the appellant to pay costs and damages upon the appeal to the court of appeals herein or requisite to stay proceedings upon the judgment appealed from.

Dated June 8, 1886.

E. S. JENNEY, *City's Att'y.*

396 At a general term of the supreme court, held at the court-house, in the city of Utica, Oneida county, in and for the fourth judicial department of the State of New York, on the 20th day of April, 1886.

Present: Hon. George A. Hardin, presiding justice; Hon. Douglas Boardman, Hon. David L. Follett, associate justices.

THE SYRACUSE WATER COMPANY, Appellant,
against
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY, Respondents.

Judgment affirmed with costs.

Opinion by Follett, J.

A copy.

F. D. HAAK, *Dep. Clerk.*

397 At a general term of the fourth judicial department of the supreme court of the State of New York, held at the court-house, in the city of Utica, N. Y., on the 20th day of April, 1886.

Present: Hon. George A. Hardin, justice presiding; Hon. David L. Follett, Hon. John C. Churchill, associate justices.

Supre ne Court.

THE SYRACUSE WATER COMPANY, Appellant,
against
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY, Respondents.

The plaintiff having heretofore appealed from the judgment rendered in the above-entitled action in Onondaga county clerk's office on the 11th day of September, 1885, in favor of the defendant, The City of Syracuse, dismissing the complaint herein with $55.00 costs and disbursements, and in favor of the defendant, The Central City Water Works Company, dismissing the complaint as to it with $57.13 costs and disbursements, and said appeal having been duly considered by this court, after hearing Wm. G. Tracy, Esq., and G. A. Forbes, Esq., for the appellant, and Louis Marshall, for the respondents, it is—

Adjudged that the judgment so appealed from be, and the
398 same is hereby, in all things affirmed with $72.13 costs and disbursements in favor of the defendant, The City of Syracuse, against the plaintiff and appellant, the said Syracuse Water Company, and with $108.13 costs and disbursements in favor of the defendant, The Central City Water Works Company, against said

plaintiff and appellant, the said Syracuse Water Company, and that the said defendants, respectively, have execution therefor.

J. E. WELLS, *Clerk.*

(J. roll endorsed:) Filed April 27, 1886, at 4.20 p. m.

Court of Appeals.

SYRACUSE WATER COMPANY, Appellant,
ag'st
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY, Respondents.

We hereby waive the execution of any undertaking upon the part of the appellant to pay costs and damages upon the appeal to the court of appeals herein or requisite to stay proceedings upon the judgment appealed from.

Dated June 8, 1886.

E. S. JENNEY, *City Att'y.*
LOUIS MARSHALL,
Att'y for C. C. W. W. Co.

Court of Appeals.

SYRACUSE WATER COMPANY, Appellant,
against
THE CITY OF SYRACUSE, Respondent.

GENTLEMEN: Take notice that the above-named appellant appeals to the court of appeals of the State of New York from the judgment of the supreme court herein entered in the clerk's office of the county of Onondaga on the 27th day of April, 1886. The
399 appellant intends to bring up for review upon such appeal said judgment and each and every part thereof.

Dated June 10th, 1886.

Yours, &c., FORBES, BROWN & TRACY,
Attorneys for the Appellant.

To the clerk of the county of Onondaga and to E. S. Jenney, Esq., attorney for the respondent.

(Endorsed:) Filed June 10th, 1886.

Court of Appeals.

THE SYRACUSE WATER COMPANY, Appellant,
against
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY, Respondents.

GENTLEMEN: Take notice that the above-named appellant appeals to the court of appeals from the judgment of the supreme court herein entered in the clerk's office of the county of Onondaga on

the 27th day of April, 1886. The appellant intends to bring
400 up for review on such appeal said judgment and each and every part thereof.

Dated June 10th, 1886.

Yours, &c., FORBES, BROWN & TRACY,
Attorneys for the Appellant.

To the clerk of the county of Onondaga and to E. S. Jenney, Esq., attorney for respondents, City of Syracuse; Louis Marshall, Esq., attorney for respondents, Central City Water Works Co.

(Endorsed:) Filed June 10th, 1886.

401 Supreme Court.

SYRACUSE WATER COMPANY, Appellant,
against
THE CITY OF SYRACUSE, Respondent.

SYRACUSE WATER COMPANY, Appellant,
against
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY, Respondents.

General Term, Fourth Department.

Argued November, 1885; decided April, 1886.

Hardin, P. J.; Follett and Churchill, A. J.

William G. Tracy, for plaintiff, appellant; Louis Marshall, for defendants, respondents.

Appeal from a judgment dismissing the complaint in each action with costs.

FOLLETT, *J.*:

The State never delegated its power to the village or city of Syracuse to create corporations for the purpose of supplying the village or city and the inhabitants of the village or city with water. The contending corporations exist solely by virtue of the statutes of the State. The plaintiff was incorporated under special laws, imposing specified burdens upon it, first in favor of village and afterward in favor of the city. The Central City Water Works Company
402 was incorporated under a general law, and it is not contended that this company is not an existing corporation.

The plaintiff's contention is that, under the acts of the Legislature relating to it and the action of the village and afterward of the city under these laws and under the charters of the village and of the city, the plaintiff has acquired the exclusive right to furnish the city and its inhabitants with water. There is no provision in the statute creating or in any of the statutes relating to the plaintiff expressly granting such exclusive right to this plaintiff. It is not contended that any of the statutes relating to the plaintiff or its prede-

cessors grants in express terms the exclusive right of furnishing the village or city with water; but it is claimed that the exclusive right arises from the acts of the village and city. It may, we think, well be doubted whether a statute simply enabling a municipal corporation to prescribe the terms upon which a private corporation may transact a particular business within the municipality confers power upon the municipality to grant the private corporation the exclusive right of carrying on the prescribed business; but this question need not be decided, for we fail to find any ordinance or contract of the village or city conferring upon the plaintiff or its predecessors the exclusive right of supplying water to the village and its inhabitants or to the city and its inhabitants.

The statute incorporating the plaintiff provides that it shall furnish the city with water, and in case of disagreement as to the amount of compensation the amount shall be fixed by the supreme court. The city has availed itself of this provision on several
403 occasions. The statute also provides that the city may acquire the works by condemnation. It is urged that because of these provisions the city is in some way estopped from authorizing a rival corporation to supply water to the city or to its inhabitants. The statutory provision which the city has availed itself of and the other provisions which it may avail itself of are burdens imposed upon the plaintiff, not for its benefit, but for the benefit of the city and its inhabitants. We are unable to see how the city can be required to take water of the plaintiff for a longer term than three years after an appraisement had under section 16, chapter 224, laws of 1849. This section does not require the city to take water of the plaintiff, but requires the plaintiff to supply water to the city upon its request. The city, by enforcing the rights conferred upon it by statute, has not estopped itself from authorizing a competing corporation to supply the city with water, and also such of its inhabitants as may choose to contract with the new corporation for water.

The instances are numerous where burdens may have been imposed upon private corporations in favor of the State or municipalities, and it has never been held that the enforcement of the burdens has estopped the State or municipality from granting to competing corporations the right to carry on the same business.

It is needless to cite authorities in support of the rule that an exclusive privilege to carry on a particular business cannot be acquired except by an express grant, and that such a privilege will never be implied from a law authorizing a person or corporation to
404 carry on a particular business at a place or within a territory named, even though the corporation or person has for a great length of time solely carried on the particular business within the territory or at the place named.

The opinion of Justice Williams, delivered upon the trial of these actions, discusses and disposes of all the questions raised in these cases and we think nothing further need be added, and we are unable to see upon what principle either case can be maintained.

The judgment in each case is affirmed with costs.

STATE OF NEW YORK, } ss:
Onondaga County Clerk's Office, }

I, J. Emmet Wells, clerk of said county and of the supreme and county courts therein, which are courts of record, do hereby certify that I have compared the foregoing copies of judgment-roll, decisions of general term, judgments of affirmance, and notices of appeals with the originals thereof filed and entered and now remaining in this office, and that the same are correct transcripts of the said originals and of the whole thereof and of the endorsements thereon.

In witness whereof I have hereunto set my hand and
[L. S.] affixed the seal of said county and courts, at Syracuse, this 7th day of July, 1886.

J. E. WELLS, *Clerk.*

(Endorsed:) Filed Oct. 11, 1889.

405 At a special term of the supreme court held, in conjunction with the Onondaga circuit, at the court-house, in the city of Syracuse, N. Y., on the 11th day of October, 1889.

Present: Hon. P. C. Williams, justice presiding.

Supreme Court.

SYRACUSE WATER COMPANY, Appellant, }
vs.
THE CITY OF SYRACUSE, Respondent. }

The remittitur from the court of appeals in the above-entitled action, bearing date October 8, 1889, having at this time been presented to this court, from which it appears that the judgment heretofore rendered in the above-entitled action was, after due deliberation, in all things affirmed by the court of appeals, with the costs of the appeal to the court of appeals against the appellant and in favor of the respondent, now, upon reading and filing the said remittitur and upon motion of Louis Marshall, Esq., on behalf of the respondent, it is—

Ordered and adjudged that the judgment of the court of appeals in the above-entitled action be, and the same hereby is, made the judgment of this court.

406 [Endorsed:] Supreme court. Syracuse Water Company, app'l't, against The City of Syracuse, resp't. Copy order. E. S. Jenney, att'y for resp't, No. 15 Third National Bank building, Syracuse, N. Y. Due and timely service of within — is hereby admitted ——, —, 18—. Dated Syracuse, N. Y. ——. Rec'd Oct. 11, '89.

407 At a special term of the supreme court held, in conjunction with the Onondaga circuit, at the court-house, in the city of Syracuse, N. Y., on the 11th day of October, 1889.

Present: Hon. P. C. Williams, justice presiding.

Supreme Court.

SYRACUSE WATER COMPANY, Appellant,
vs.
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY, Respondents.

The remittitur from the court of appeals in the above-entitled action, bearing date October 8, 1889, having at this time been presented to this court, from which it appears that the judgment heretofore rendered in the above-entitled action was, after due deliberation, in all things affirmed by the court of appeals, with the costs of the appeal to the court of appeals against the appellant and in favor of the respondents, now, upon reading and filing the said remittitur and upon motion of Louis Marshall, Esq., on behalf of the respondents, it is—

Ordered and adjudged that the judgment of the court of appeals be, and the same hereby is, made the judgment of this court.

408 [Endorsed:] Supreme court. Syracuse Water Company, app'l't, against The City of Syracuse *et al.*, resp'ts. Copy order. E. S. Jenney & Louis Marshall, att'ys for resp'ts, No. 15 Third National Bank building, Syracuse N. Y. Due and timely service of within — is hereby admitted —— —, 18—. Dated Syracuse, N. Y. —— ——. Rec'd Oct. 11, 1889.

409 Supreme Court.

SYRACUSE WATER COMPANY
vs.
THE CITY OF SYRACUSE.

The remittitur from the court of appeals in the above-entitled action, wherein it appears that the judgment heretofore appealed from has been in all things affirmed with costs, having been duly filed and made the judgment of this court, now, upon motion of E. S. Jenney, defendant's attorney, it is—

Adjudged that said judgment be, and the same is, in all things affirmed, with $95.13 costs in favor of the defendant, The City of Syracuse, against the plaintiff, The Syracuse Water Company, and that the said defendant have execution therefor.

GEO. G. COTTON, *Clerk.*

(Endorsed:) Filed Oct. 21, 1889, at 5 p. m.

410 [Endorsed] Supreme court. Syracuse Water Company against The City of Syracuse. Copy judgment. E. S. Jenney, att'y for def't, No. 15 Third National Bank building, Syracuse, N. Y. Due and timely service of within — is hereby admitted —— —, 18—. Dated Syracuse, N. Y. —— ——. Rec'd Oct. 21, '89.

To Forbes, Brown & Tracy, Esqs.

GENTLEMEN: Take notice that a judgment, of which the within is

a copy, was this day entered in the within-entitled action in Onondaga county clerk's office.

Dated October 21, 1889.

Yours, &c.,
E. S. JENNEY,
Def't's Att'y, 15 *Third Nat. B'k B'ld'g, Syracuse, N. Y.*

411 Supreme Court.

SYRACUSE WATER COMPANY
vs.
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY.

The remittitur from the court of appeals, wherein it appears that the judgment heretofore appealed from by the plaintiff has been in all things affirmed with costs, having been duly filed and made the judgment of this court, now, upon motion of E. S. Jenney and Louis Marshall, defendants' attorneys, it is—

Adjudged that said judgment be, and the same is, in all things affirmed, with $91.93 costs in favor of the defendant, The City of Syracuse, and with $144.45 costs in favor of the defendant, The Central City Water Works Company, against the plaintiff, The Syracuse Water Company, and that the said defendants have execution therefor.

GEO. G. COTTON, *Clerk.*

(Endorsed:) Filed Oct. 21, 1889, at 5 p. m.

412 [Endorsed:] Supreme court. Syracuse Water Company against The City of Syracuse & The Central City Water Works Company. Copy judgment. E. S. Jenney & Louis Marshall, att'ys for def'ts, No. 15 Third National Bank building, Syracuse, N. Y. Due and timely service of within — is hereby admitted ——, 18—. Dated Syracuse, N. Y. —— ——. Rec'd Oct. 21, '89.

To Forbes, Brown & Tracy, Esqs.

GENTLEMEN: Take notice that a judgment, of which the within is a copy, was this day entered in the within-entitled action in Onondaga county clerk's office.

Dated October 21, 1889.

Yours, &c.,
E. S. JENNEY &
LOUIS MARSHALL,
Att'y- for Def'ts, 15 *Third Nat. B'k B'ld'g, Syracuse, N. Y.*

413 Court of Appeals, Second Division.

THE SYRACUSE WATER COMPANY, Appellant,
vs.
THE CITY OF SYRACUSE, Respondent.
} Argued June 14th, 1889. Decided October 8th, 1889.

THE SYRACUSE WATER COMPANY, Appellant,
vs.
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY, Respondents.

Appeals from judgments of the general term of the supreme court in the fourth judicial department affirming judgments entered upon decisions of the court of special term dismissing the complaints.

The first action was brought to restrain the defendant from granting to the Central City Water Works Company the right to place pipes or other structures in the city of Syracuse, with a view to supply it with water; and the purpose of the second action was to restrain each of the defendants from exercising any rights or privileges in that respect which the city, through its common council, had by resolution sought to give the defendant company and which the latter had assumed to take.

W. G. Tracy and Geo. F. Comstock, for appellants; Louis Marshall, for respondent.

BRADLEY, *J.:*

These actions rest upon the charge made by the plaintiff that the defendants were proceeding to invade its rights; and the plaintiff alleges that such would be the effect of the exercise of the privilege which the city of Syracuse sought to grant to the Central City Water Works Company of providing the means contemplated to supply the city with water and in performing the contract made between the defendants for that purpose. This charge is founded upon the claim asserted by the plaintiff of the exclusive right or franchise to furnish the city with water.

The leading inquiry, therefore, is whether such claim is supported.

The plaintiff was incorporated by laws of 1849, ch. 224, and ever since then it has furnished water to the city and its inhabitants. To do that was the purpose of its creation, and it was fully provided by its charter with the powers essential to that service, amongst which was that of eminent domain. The franchise granted to the plaintiff embraced all the powers, privileges, and immunities within the charter and constituted a contract between the State and the plaintiff, and in the exercise of the powers so granted the latter was entitled to protection. It follows that if within the franchise granted by the State to the plaintiff was the exclusive right to supply the city of Syracuse with water the defendants should be enjoined
414 from proceeding, as they are attempting to proceed, to interfere with or impair such right. St. Tammany Water Works *vs.* New Orleans Water Works, 120 U. S., 64; New Orleans Gas Co.

vs. Louisiana Light Co., 115 U. S., 650; New Orleans Water Works Co. *vs.* Rivers, *id.*, 674; Louisville Gas Co. *vs.* Citizens' Gas Co., *id.*, 683.

By reference to its charter it appears to have been provided that the plaintiff should, when requested, furnish water to the common council of the city for the extinguishment of fires and other purposes upon such terms as might be agreed upon between them, and in case they could not agree either the common council or the plaintiff might apply to the supreme court for the appointment of three commissioners who should prescribe the terms upon which the water should be furnished for the term of three years, and at the expiration of that time and once in three years thereafter application in like manner might be made for a new commission for such purpose. Section 16.

In case the plaintiff should not furnish a sufficient supply of good and wholesome water for the use of the city and the people thereof within two years from the passage of the act and continue to do so, the common council might give six months' written notice to the company to furnish the same, or that application would be made to the supreme court for the appointment of five commissioners; and in case the company should continue to neglect to furnish such supply until the expiration of the notice, then the property of the company should be appraised, etc., and upon payment by the common council to the company of the sum so determined they should become the owners of the property so appraised and paid for, and be possessed of all the powers given by the act to the company. Section 26. And at any time after the expiration of twenty years the common council should have the right to resume all the property, rights, powers, and privileges of the company on paying to it the amount of capital stock actually paid in and expended in the works, with fifteen per cent. annually thereon, deducting therefrom the actual profits annually received by the company, and thereupon it should convey such property to the common council. Section 29.

The provisions of those three sections are thus specifically referred to, because they are relied upon to support the construction and effect claimed for the statute on the part of the plaintiff, and for a like purpose reference is made to section 19, which provides that nothing in the act should be deemed to affect, impair, or interfere with the rights, privileges, and obligations of the city "derived or imposed by or under the act of the Legislature entitled An act to supply the village of Syracuse with wholesome water, passed March 27th, 1821, or any act subsequently passed amending or altering" it; and this takes the inquiry back to the act of March 27th, 1821, which provided that the freeholders and inhabitants of the village of Syracuse, in the town of Salina, were authorized to take water for the use of the village from any springs on the lands of the people of the State in that town lying eastward of the village and to carry the same under ground across such lands to the village, subject to the right of the canal commissioners to take the water from such springs to supply the Erie canal, if their elevation was sufficient to carry water from them into the Rome summit level of the canal. It also pro-

vided for the election annually by the inhabitants of the village of three trustees to transact the business in relation to the rights granted by the act to the inhabitants of the village to bring the water and regulate the manner of its use and to fix the sums to be paid annually by those using it.

415 This was the situation until in 1825, when the village was incorporated by an act which provided that all the rights, property, and powers of the trustees of the Syracuse water works should be vested in the corporation, subject to the obligations of such trustees, and that the duties enjoined on them by the act of 1821 should thereafter be exercised by the trustees of the village. Ch. 124, section 11. And by an amendatory act passed in 1834 the trustees of the village were given power to convey to Oliver Teall, his heirs or assigns, all the rights, property, and powers of the trustees of the Syracuse water works, as vested in the village, for the term of thirty-five years; and it was provided that Teall, his heirs or assigns, should be possessed of all the powers, rights, and privileges which were granted by the act of 1821, before referred to, and all the powers of the village on the subject, and if he should neglect to exercise them the trustees of the village, after two years' notice, should have the right to resume all such rights, powers, and privileges; and it was further provided that on the expiration of the thirty-five years they should have the power to reinvest themselves and take possession of the water works by paying the estimated cost of erecting the works, less the decrease in value occasioned by waste, decay, and use, to be determined by appraisers to be appointed by the supreme court, in case the parties were unable to agree upon the amount. Ch. 151.

In June, 1841, pursuant to that act and subject to its provisions, such conveyance was made by the trustees of the village of Syracuse to Oliver Teall.

In 1847 the village was converted into a city by charter, passed in December of that year, by which it was provided that the common council should have power to make, modify, and repeal ordinances, rules, regulations, and by-laws for the following, among other, purposes: "To exercise all other powers conferred on them by the act in relation to highways, the prevention of fires, the levying of taxes, the supplying the village with good and wholesome water, and other subjects of municipal regulation." Ch. 475, title 3, section 7, sub. 31. And, further, that all former acts relative to the incorporation of the village of Syracuse were repealed, but that such repeal should not affect any act done, privilege granted, right accrued or established previous to the time when such city charter should take effect; and that the same rights, duties, obligations, and requirements "held by the trustees of the village of Syracuse or imposed by them in relation to Oliver Teall as to supplying the said village with pure and wholesome water shall be conferred and imposed upon the said common council." *Id.*, title 10, section 12.

Upon the incorporation and organization of the plaintiff, and in 1849, Teall and his associates in interest conveyed the water-works property and privileges before mentioned to it; and through such

conveyance the plaintiff took all rights, powers, and privileges which were originally vested in the trustees by the act of 1821 to supply the inhabitants of the unincorporated village of Syracuse with water, and which, with the property applicable to such purpose, passed to the incorporated village by the act of 1825, and thence to Teall by conveyance, pursuant to the act of 1834. This reference has been made to the statutes representing the legislative grants to the plaintiff, and from which it derived its rights and powers upon taking its charter and the conveyance referred to, with a view to the
416 inquiry as to the character and extent of such powers and privileges in their relation to the city of Syracuse.

The company evidently was created solely for the purpose of supplying water to the city for the use of it and its inhabitants; and, so far as appears, the city then had no means for such supply other than such as had been possessed by Teall and his associates and such as it may have been contemplated the plaintiff should provide. It must be assumed that the Legislature was advised of the situation, and that the franchise was granted for all the purposes within the provisions of the charter.

The question now under consideration is the legislative intent; and, for the purpose of ascertaining the powers and privileges which were granted to the plaintiff other than those incidental to the powers expressly given and necessary to carry them into effect, reference can be had only to the terms of the grant. 2 Kent's Com., 298; 1 R. S., 600, section 3; Halstead *vs.* The Mayor, etc., 3 N. Y., 433.

The construction and effect to be given to the contract between the State and the grantee of a franchise have been the subject of much discussion, and the view of Chancellor Kent at one time was that, although "the creation of the franchise be not declared exclusive, yet it is necessarily implied in the grant, as in the case of the grant of a ferry, bridge, or turnpike or railroad; that the Government will not, either directly or indirectly, interfere with it, so as to destroy or materially impair its value. * * * All grants or franchises ought to be so construed as to give them due effect by excluding all contiguous competition which would be injurious and operate fraudulently upon the grant." 3 Kent's Com., 459; Newburgh Turnpike Co. *vs.* Miller, 5 John. Ch'y, 101.

Whatever support that rule of the interpretation and effect may have in reason or propriety it is not now available to that extent for the beneficial protection of the grantee in the exercise of his franchise, but, on the contrary, public grants are to be so strictly constructed as to operate as a surrender by them of the sovereignty no further than is expressly declared by the language employed for the purpose of their creation. The grantee takes nothing in that respect by inference. Such is deemed the legal intent of the State in imparting to its citizens or corporations powers and privileges of public character; and therefore, except so far as they are by the terms of the grant made exclusive, the power is reserved to grant and permit the exercise of competing and rival powers and

privileges, however injurious they may be to those taken by the prior grantee.

The important leading case to that effect in this country was Charles River Bridge *vs.* Warren Bridge (11 Peters, 420), where was sustained the grant of the right to erect a bridge over the Charles river near one which had been constructed over the same river pursuant to prior grant from the State of Massachusetts, although it produced a competition practically destructive of the value to the grantee of such prior franchise; and this was put upon the ground, resulting from the declared rule of construction of such grants, that they should be strictly construed as against the grantee, and that nothing should be taken by inference or presumption to enlarge their import. The court held that the State had relinquished its sovereignty so far only as the purpose to do so was expressed in the prior grant; and therefore, as it had not by it made the franchise exclusive in that locality or denied to itself the power to grant similar privileges to others, there was no violation of the
417 legal rights of the prior grantee produced by subsequent one complained of. Although that case was determined by a divided court, and it does not very clearly appear by the report of it upon precisely what ground all the members of the majority placed their concurrence in the result, the doctrine there announced by Mr. Ch. Justice Taney has since then been treated by that court as established. Lehigh Water Co. *vs.* Easton, 121 U. S., 391. It has also been adopted and is the settled rule in this State. Mohawk Bridge Co. *vs.* Utica & S. R. R. Co., 6 Paige, 554; Oswego Falls Bridge Co. *vs.* Fish, 1 Barb. Ch'y, 547; Thompson *vs.* N. Y. & H. R. R. Co., 3 Sandf. Ch'y, 625; Auburn, etc., Plank Road Co. *vs.* Douglass, 9 N. Y., 444, 452; Fort Plain Bridge Co. *vs.* Smith, 30 N. Y., 44, 61; Power *vs.* Village of Athens, 99 N. Y., 592; Dermott *vs.* The State, *id.*, 107.

The plaintiff's charter does not in terms expressly declare that the contemplated powers and privileges to supply water to the city were exclusively with the plaintiff, nor does it in that manner deny to the State the right to make other similar grants for that purpose, and the same may be said of the acts of 1821, 1825, and 1834, through which the plaintiff, by the conveyance to it, claims to have derived some rights in that respect. The plaintiff undoubtedly took by such conveyance all the privileges and property which Teall possessed for the purpose of furnishing such supply, with the power added by its charter of taking water from any suitable sources, and to enable it to do so it was vested with the right of eminent domain. These several statutes must be treated *in pari materia* with a view to their purpose and effect and to ascertain the rights taken by the plaintiff through them.

When the trustees representing the unincorporated and the incorporated village of Syracuse and subsequently when Teall assumed the power pursuant to the statute to furnish water there was no other means of supply in contemplation, and such evidently was the situation when the plaintiff took its charter and became vested by the conveyance with all the rights and property then existing applicable

and applied to that purpose. Upon the faith of that apparent situation Teall and afterwards the plaintiff proceeded to provide the means to supply water to the municipality and its inhabitants, and in that behalf expended much money in the plant for its accomplishment. It is therefore with some force urged that these are considerations bearing upon the practical construction of the relation between the plaintiff and the city, produced by the statutes and the proceedings had under them, which disables the latter from denying to the plaintiff, in any manner otherwise than that prescribed by the statute, the right exclusively to continue to supply water there; and much reliance is by the plaintiff's counsel placed upon the sixteenth section of its charter, which required the plaintiff, when requested, to furnish water to the common council of the city for extinguishing fires and other purposes. This provision was made available by request, pursuant to it in April, 1851, and afterwards contracts to supply water for certain periods were made between the plaintiff and the common council. The request was an acceptance of the obligation imposed, so far as the statute rendered it essential to the exercise by the plaintiff of the franchise granted to it. It is contended that the request, in view of the duty imposed upon the plaintiff, was productive of a contract between it and the city, perpetual and interminable, while the plaintiff retained its franchise and other property having relation to its exercise. While the request may have made the grant to the plaintiff effectual for the purpose provided by the statute, we think the plaintiff is not entitled upon any contract between it and the city to the equitable relief sought, but it must depend upon the contract between it and the State furnished by the grant, aided so far as it legitimately may be by the consideration to which such request may be entitled as bearing upon the operation and effect of the grant. The municipal corporation, as such, could bind itself by such contract only as it was authorized by statute to make. It could not grant exclusive privileges, especially to put mains, pipes, and hydrants in its streets, nor could it lawfully by contract deny to itself the right to exercise the legislative powers vested in its common council. It cannot well be claimed that any express power was delegated to the municipality to grant any exclusive franchises, and public policy will not permit the inference of authority to make a contract inconsistent with the continuously operative duty to make such by-laws, rules, and regulations as the public interest or welfare of the city may require. Mehan *vs.* Sharp, 27 N. Y., 611; New York *vs.* Second Av. R. R. Co., 32 N. Y., 261; Richmond Co. Gas Light Co. *vs.* Middletown, 59 N. Y., 228; Gale *vs.* Village of Kalamazoo, 23 Mich., 344; 9 Am. R., 80; Logan *vs.* Pyne, 43 Iowa, 524; 22 Am. R., 261; Des Moines Gas Co. *vs.* City of Des Moines, 44 Iowa, 505; 24 Am. R., 756; Norwich Gas Light Co. *vs.* Norwich City Gas Co., 25 Conn., 19.

418.

Reference has already been made to the provision of the city charter conferring upon it power to make by-laws, rules, and regulations in relation to certain matters, including those of prevention of fires and of supplying water; and it may be observed that in 1857, by an act amendatory of the city charter, it was provided

that the common council should "have power to make, establish, publish, modify, ordain, amend, or repeal ordinances, rules, regulations, and by-laws" for the purposes, among others, "to light the streets and public buildings of the city and to supply the city with water"—ch. 63, title 4, section 4, sub. 2. While the city may make contracts and assume obligations for legitimate municipal purposes, and become liable for failure to observe them, it is not consistent with the discretionary powers which the common council may be required to exercise in the discharge of their duty to the public which they represent for them to grant by contract exclusive privileges having the character of perpetuity. There is no such contract between the city and the plaintiff to support the claim for an injunction against the city. Further than that, it is unnecessary to determine what contractual relation between them arose out of the request referred to or what was its character, duration, or effect; nor is it necessary to add that the facts found by the trial court upon the subject of performance by the plaintiff would justify the denial of an injunction if the claim for it were dependent upon a mere executory contract between those parties. In dealing with municipal corporations parties are chargeable with knowledge of their powers, as they are furnished only by statute. It is therefore not seen upon the facts of this case that the actions were aided by any disability of the defendant city occasioned by estoppel *in pais*.

The inquiry which presents more important considerations has relation to the franchise granted to the plaintiff and represented by its charter. By it the plaintiff was given corporate existence and vested with powers and privileges to enable it to exercise its functions. This incorporeal hereditament was its property, and whatever other or corporeal property it had acquired, having relation to its legitimate powers and for the purposes of their exercise,
419 became and, while applicable to such purpose, was inseparably united with the franchise. The corporate rights and the corporeal means of their exercise therefore constitute, as it were, a single body, consisting of property corporeal and incorporeal. Both the power and the means of exercising it are essentially united, and upon such union is dependent the enjoyment, as well as the practicable value, of the franchise. Gue *vs.* Tide Water Canal Co., 24 How. U. S., 257; People *vs.* O'Brien, 111 N. Y., 2.

When its charter was granted it was in contemplation that the plaintiff would be called upon to assume its corporate duties and exercis*ing* its powers in furnishing water to the city of Syracuse, and that for such purpose it would take and acquire the means of doing so, and in that belief the company did take by conveyance certain property then in use for that service, and thereafter acquired and applied other property to such use, and for nearly forty years has continued to furnish water for the city and its inhabitants. So far as appears, until the year 1885 no means of supply have been sought for otherwise than through the plaintiff.

Then, pursuant to the general act authorizing it (Laws 1880, ch. 85), the Central City Water Works Company was incorporated, and the objects of its creation, as expressed in its articles of incorpora-

tion, were "To supply the city of Syracuse, N. Y., and adjacent villages with pure and wholesome water for domestic use, for fire protection, and other public purposes, and for the purpose of accumulating, storing, selling, furnishing, and supplying water in said city and adjacent villages for domestic, manufacturing, municipal, and agricultural purposes." Shortly thereafter the common council of the city adopted a resolution to the effect that the Central City Water Works Company, subject to the conditions therein mentioned, were authorized to construct, maintain, own, and operate water works in the city of Syracuse for the purpose of supplying it with pure and wholesome water, etc., specifying the sources from which the water should be taken, how its quality should be approved, the pressure which it should have at the hydrants, the number, character, and generally the distribution of the hydrants to be furnished, and that on the completion of the works (which was to be accomplished within three years after acceptance by it of the proposition), the city agreed to rent from the company for the period of twenty years the right to use the water to be supplied by it at five hundred and twenty hydrants and such additional number as might be ordered, and to pay therefor at the rate of fifty dollars per hydrant annually. The right was reserved to rescind the grant on failure of the company to comply with its terms; also the right after five years to acquire the works and property of the company in the manner there mentioned. This agreement and proposition and all their terms expressed in the resolution were formally accepted by the defendant company in April, 1885. The purpose of these actions was to prevent the contemplated agreement between the defendants and as made between them from being carried into effect upon the ground and for the alleged reason that the plaintiff had the exclusive right or franchise to supply the city and its inhabitants with water; and although the charter of the plaintiff does not in terms declare such power to be exclusive or deny to the State the right to create a rival franchise in another, it is contended that the grant to the plaintiff in its nature necessarily gave to the plaintiff the exclusive right to supply the city with water, because a franchise to do so can embrace no less than the whole city and the entire supply of water within its boundaries, and therefore the proposed grant to the defendant is an invasion of the plaintiff's franchise.

It may be assumed that what is embraced within the terms of the grant to the plaintiff is exclusive in such sense that it cannot be covered by grant to another—that is to say, a grant from the State to a company to construct and operate a bridge, ferry, or telegraph gives to it the exclusive right to operate such ferry, bridge, or telegraph, and no right can be given or taken to occupy the same space as the one so constructed or operated under the grant. The property in the company to that extent and for such purpose exclusively belongs to it, but a similar franchise may not infringe such right, although it may have the effect to impair its operative value. In such case, that would be the incidental consequence of the lawful competition and not an invasion of the prior grant. Lehigh

Water Company's Appeal, 102 Penn. St., 515. By reference to the plaintiff's charter it will be observed that the provisions directly bearing upon the subject of furnishing water are that "for the purpose of supplying the said city of Syracuse with pure and wholesome water said company may purchase," &c., "real estate necessary for the purpose"—section 8. "And said company shall, when requested, furnish water to the common council of the city of Syracuse for extinguishing fires and other purposes"—section 16.

After a careful consideration of the able and forcible argument of the plaintiff's counsel on this subject we are unable, in view of the governing rule of construction in such cases, to adopt its reasoning to the effect that the language or nature of the grant is such as to cut off all competition in furnishing water to the city and its inhabitants and to vest in the plaintiff the exclusive franchise in that respect.

The effect of rival means for the supply of water to the city upon the value of the plaintiff's franchise is not properly the subject of consideration upon this inquiry unless it bears upon the question of construction of its charter, for which purpose it does not seem important. The plaintiff's structures belong to it exclusively, and it is its exclusive right to take water from its reservoirs, convey it through its mains and pipes, and to use its apparatus for the distribution and supply of water to the city and its inhabitants. The franchise of the plaintiff and all its property remain subject to its control and management. By force of the grant to it the plaintiff took and has the right to maintain its structures, the privilege of supplying all the water the city or its inhabitants may take from it, but not the right to supply them with all the water they may be permitted to use. It may be that the demand upon it for supply will be lessened by the addition of other means which may be provided to bring water into the city.

The supply embraced within the franchise of the plaintiff did not by the terms of the grant or by necessary implication shut out all other means of obtaining supply there, and, in view of the demand of the rule of construction before referred to, such exclusive right in the grant of a public franchise cannot rest upon inference, presumption, or doubtful construction. Chenango Bridge Co. *vs.* Binghampton Bridge Co., 27 N. Y., 93; S. C., 3 Wall., 75. It would hardly be claimed that a grant to a ferry company of the franchise to supply the means of travel and transportation across the East River between New York and Brooklyn would confer the exclusive right to such company to control such transportation by ferry on that river between the two cities, although it would have the exclusive right to operate its boats and to enter its slips. Such exclusive
421 right would necessarily result from the nature of the grant as vested by it, because the property and means provided for the exercise of the franchise belong to the grantee and can be occupied or used by no other party.

We are unable to see the applicable force sought to be given analogously to the matter, etc., of Union Ferry Co. (98 N. Y., 139) to the question under consideration. There the ferry company proceeded

under the statute (laws 1882, ch. 259) to increase the capacity of the ferry slip accommodations on the East River by taking *in invitum* land for the purpose. The question was whether that statute was violative of the provisions of the constitution prohibiting the passage of any private or local bill "granting to any private corporation, association, or individual any exclusive privilege, immunity, or franchise whatever"—art. 3, section 18. It was held that the statute was not within that constitutional prohibition or its purpose; and, among other reasons, Judge Rapallo, in delivering the opinion, speaking for the whole court, said that "the exclusiveness prohibited is one which is created by the terms of the grant, not that which results from the nature of the property or right granted." There all ferry companies are lessees of the city of New York, in which the control of them is exclusively vested. The Union Ferry Company, in behalf of the city as well as for its own beneficial use as lessee, instituted the proceedings for the additional slip at the pier held by it as such. The right to appropriate this addition thus acquired under the statute was exclusively that of the city or of its lessee as such of that ferry. Nobody else could take it in that manner, and therefore the learned judge remarked that "where from the nature of the case it is impossible that the right or power should be possessed or employed by more than one party, and it is important to the public interest that it should exist and be exercised by some one, the State must necessarily have authority to select the grantee." The inherent nature of the franchise to furnish water to a city and its inhabitants does not come within that proposition. That service is not necessarily confined to one, nor is the supply necessarily dependent upon any single source or means of furnishing it.

The franchise, to be exclusive, must therefore be given by the terms of the grant; otherwise it is not a resultance from its nature; and thus we are taken back to the inquiry which has already received consideration as to what was granted by the plaintiff's charter. Nothing appears in the prior franchise to supply water to the village and in the authorized conveyance to Teall to modify the views above given upon the subject. It is, however, urged that the city can avail itself of no means other than through the plaintiff to obtain any water supply except by resuming and taking its property and powers in the manner prescribed in one of the sections 26 and 29 of the plaintiff's charter, to which reference has already been made. It appears that those provisions were inserted in the charter at the suggestion or request of the common council of the city, and that was evidently done to enable it, in the event referred to in the one and on the expiration of the time mentioned in the other section, if the interest of the city should require it, to take the matter of its water supply into its own management and control. It is not seen that this right reserved to the city has any essential bearing upon the question of the construction of the grant to the plaintiff. It simply gave the city the opportunity in the events provided to become possessed of the property which should constitute the plant of the plaintiff and be applied to the service of
422 furnishing water to the city. This right was not made a

legal duty, upon the performance of which was dependent the power to use means other than through the plaintiff to obtain further means of water supply for the city. It was a privilege merely which it might or might not exercise at pleasure; but the franchise granted to the plaintiff and the property united with it constitute its estate, and which it holds subject to the reserved right of the city to acquire it in the manner so provided by the charter. The defendant company has taken its charter from the State through the general act of the Legislature. Its powers enable it to enter into contract to furnish water to the city. The proposed contract does not in its terms confer upon it any exclusive right to supply water to the city. It therefore violates no right which the plaintiff took by its grant from the State, and it was within the power of both defendants to make such a contract. Laws of 1884, ch., 386; laws of 1885, ch., 26, section 22, sub. 2.

These views lead to the conclusion that the obligation of the contract between the State and the plaintiff represented by the franchise granted to the latter is not and will not be impaired by the exercise by the defendant company of the privileges granted to it in the performance of the proposed contract between the two defendants.

And that the judgment should be affirmed.

All concur except Follett, ch. J., and Mann, J., not sitting; Haight, J., not voting.

A copy.

H. E. SICKELS, *Reporter*,
Per C.

I hereby certify that the foregoing is a copy of the opinion of the court of appeals and contains the grounds of the judgment rendered in that court in the action of The Syracuse Water Company, appellant, against The City of Syracuse, respondent, and in the action of The Syracuse Water Company, appellant, against The City of Syracuse and The Central City Water Works Company, respondent.

Syracuse, May 29th, 1890.

WM. C. RUGER,
Chief Judge Court of Appeals.

(Endorsed:) Filed June 20, 1890.

422½ STATE OF NEW YORK, *County of Onondaga,* } ss:

——— ———, being duly sworn, says that he is the — in the above-entitled action; that he has heard read the foregoing — and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

——— ———.

Subscribed and sworn to before me this — day of ———, 188–.

——— ———.

423 [Endorsed:] Supreme Court. The Syracuse Water Co., app'l't, *vs.* City of Syracuse, resp't. The Syracuse Water Co., app'l't, *vs.* City of Syracuse & Central City Water Works Co., resp't. Opinion. Copy. Tracy, McLennan & Ayling, attorneys for appellant; office and post-office address, 1 to 4 Jerry Rescue block, Syracuse, N. Y. Due personal service of a copy of the within — is hereby admitted. Dated ——— —, ———. ——— ———, att'y for —. June 19.

424 Supreme Court of the United States, of October Term, in the Year 1890.

THE SYRACUSE WATER COMPANY, Plaintiff in Error,
ag't
THE CITY OF SYRACUSE, Defendant in Error.

THE SYRACUSE WATER COMPANY, Plaintiff in Error,
ag't
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY, Defendants in Error.

Afterward, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said The Syracuse Water Company, by William G. Tracy, *their* attorney, and says that in the record and proceed-s aforesaid in each and both of the above-entitled actions there is manifest error in each and every of the following rulings, findings, and decisions made in each of the same, to wit:

1. The State appellate court erred in holding and deciding that the charter of the plaintiff in error, chap. 224 of the laws of the State of New York, passed in 1849, and the amendments to said charter, chapter 104 of the laws of 1851, chapter 35 of the laws of 1853, and chapter 16 of the laws 1855 of said State, did not grant to the plaintiff in error an exclusive franchise to supply the city of Syracuse and its inhabitants with water, as claimed by said plaintiff in error.

And in holding and deciding that the following provisions of the subsequent charters of said city, being chapter 63 of the laws of 1857 and chapter 26 of the laws of 1885 of said State, were not laws impairing the obligations of a contract and did not authorize
425 the taking of the property of the plaintiff in error without due process of law or for public use without just compensation, to wit:

"The common council (of said city of Syracuse) shall have power to make, establish, modify, ordain, amend, or repeal ordinances, rules, regulations, and by-laws for the following purposes:

"To light the streets and public buildings of the city and to supply the city with water."

2. The State appellate court also erred in holding and deciding that the grant by the city of Syracuse to the Central City Water Works Company of a franchise to supply said city and its inhabitants

with water under and by virtue of the charter of said city was not a law impairing the obligation of a contract.

3. The State appellate court also erred in holding and deciding that section 16 of chapter 224 of the laws of the State of New York, passed in 1849, being the charter of the plaintiff in error, and the amendment thereto, chapter 104 of the laws of 1851 of said State, and the notices served and the acts of the plaintiff in error and The City of Syracuse, defendant in error, thereunder did not constitute a perpetual, binding contract, as was claimed by the plaintiff in error, whereby the city of Syracuse was bound to take from the plaintiff in error water for extinguishing fires and other municipal purposes and pay it therefor until the franchise of said plaintiff in error was resumed and paid for by said city, as provided for in the said charter of said plaintiff in error.

And also in holding and deciding that the following provisions of the subsequent charters of said city, being section 4, title 4, chapter 63, laws of 1857, and section 22, subdivision 2, chapter 26, of the laws of 1885 of said State, to wit:

"The common council (of said city of Syracuse) shall have power to make, establish, publish, modify, ordain, amend, or repeal
426 ordinances, rules, regulations, and by-laws for the following purposes, among others:

"2. To light the streets and public buildings of said city and to supply the city with water."

And chapter 85 of the laws of 1880 of said State, under which the defendant in error, The Central City Water Works Company, was incorporated, authorizing it to enter into contracts with the cities of said State to supply them with water for municipal purposes—

Were not each and every of them laws impairing the obligation of said contract entered into by said city of Syracuse to take from said plaintiff in error all water needed for municipal purposes and pay it therefor.

4. The State appellate court also erred in holding and deciding that under and by virtue of divers statutes of said State of New York, to wit, chapter 176, laws of 1821; chapter 124, laws of 1825; chapter 236, laws of 1829; chapter 151, section 9, laws of 1834; chapter 106, laws of 1842; chapter 475 of the laws of 1847; chapter 274 of laws of 1849, and the conveyances and acts thereunder of Oliver Teall and the plaintiff in error, his successor and assignee, on the one part, and the village of Syracuse and the city of Syracuse, its successor and assignee, on the other part, an exclusive franchise was not granted to the plaintiff in error to supply the defendant in error, The City of Syracuse, and its inhabitants with water until such franchise was resumed and paid for by said city, as provided for in the charter of said plaintiff, as was claimed by the plaintiff in error.

And in holding and deciding that said city on its incorporation did not make a valid contract with said Teall and said plaintiff in error, his successor and assignee, that it would not thereafter exercise any rights or grant any franchise or enter into any con-
427 tract except to and with the plaintiff in error to supply itself

and its inhabitants with water in any other manner than by resuming the franchise of the plaintiff in error and paying therefor in accordance with the provisions of the charter of the latter and chap. 151 of the laws of 1834.

And in holding and deciding that the following provisions of the subsequent charters of said city, being section 4, title 4, chapter 63, laws of 1857, and section 2, subdivision 2, of the laws of 1885 of said State, to wit:

"The common council (of said city of Syracuse) shall have power to make, establish, publish, modify, ordain, amend, or repeal ordinances, rules, regulations, and by-laws for the following purposes:

"2. To light the streets and public buildings of said city and to supply the city with water."

And chapter 85 of the laws of 1880 of said State, under which the defendant in error, The Central City Water Works Company, was incorporated, authorizing it to supply water for domestic and municipal purposes—

Were not each and every of them laws impairing the obligation of a contract entered into between the plaintiff in error and the defendant in error, The City of Syracuse, granting to the plaintiff in error an exclusive franchise to supply water to the city of Syracuse and its inhabitants, and also providing that said city would not thereafter exercise any powers on that subject or grant such franchise to any other person or corporation or enter into any contract with persons other than the plaintiff for a supply of water except by resuming the same and paying the plaintiff in error therefor, as provided by its charter.

And also in holding and deciding that said laws of 1857,
428 1880, and 1885 did not authorize the taking of the property of the plaintiff in error without due process of law or for public use without just compensation.

And the said Syracuse Water Company prays that the judgment aforesaid may be reversed, annulled, and altogether held for naught.

WILLIAM G. TRACY,
Attorney for Plaintiff in Error.

(Endorsed:) Filed June 20, 1890

428½ STATE OF NEW YORK, } ss.:
County of Onondaga, }

—— ——, being duly sworn, says that he is the — in the above-entitled action; that he has heard read the foregoing — and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

—— ——.

Subscribed and sworn to before me this — day of ——, 189-.

—— ——.

429 [Endorsed:] Supreme Court. Syracuse Water Company, pl'ff in error, *vs.* City of Syracuse, def't in error. Syracuse Water

Company, pl'ff in error, *vs.* City of Syracuse & The Central City Water Works Company, def'ts in error. Assignment of errors. Copy. W. G. Tracy, attorney for pl'ff in error; office and post-office address, 23, 24, and 25 Syracuse Savings Bank b'ld'g, Syracuse, N. Y. Due personal service of a copy of the within — is hereby admitted. Dated —— —, —. —— ——, att'y for —. June 21.

430 Supreme Court of the United States.

SYRACUSE WATER COMPANY, Plaintiff in Error,
ag't
THE CITY OF SYRACUSE, Defendant in Error.

THE SYRACUSE WATER COMPANY, Plaintiff in Error,
ag't
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY, Defendants in Error.

I, William C. Ruger, chief judge of the court of appeals of the State of New York, do hereby certify that in the decision of the court of appeals of the State of New York in the above-entitled suits there was in each of them necessarily drawn in question the validity and construction of the following chapters of the laws of the State of New York, to wit, chapter 176, laws of 1821; chapter 124, laws of 1825; chapter 236, laws of 1829; chapter 134, laws of 1834; chapter 475, laws of 1847; chapter 224, laws of 1849; chapter 104, laws of 1851; chapter 63, laws of 1857; chapter 26, laws of 1885, and the validity of certain contracts made and franchises granted by the city of Syracuse under and by virtue thereof, and as to whether any of said statutes of the State of New York were laws impairing the obligations of a contract, or authorized the taking of the property of plaintiff in error without due process of law, or for public use without just compensation, and the decision of said court of appeals was in favor of the validity of said statutes.

I further certify that the aforesaid questions were raised and presented to this court and their decision was necessary to the judgments or decrees rendered herein, and was against the rights
431 claimed by the plaintiff in error under its charter from the Legislature of the State of New York, and contracts entered into between it and the city of Syracuse, and as assignee and successor of Oliver Teall, and in and to the contracts entered into between the village of Syracuse and said Oliver Teall and of franchises granted to said Teall by said village and State, all of which obligations on the part of said village, as alleged by said plaintiff in error, have been assumed by and are binding on said city.

WM. C. RUGER,
Chief Judge of the Court of Appeals of the State of New York.

(Endorsed:) Filed & entered June 21, 1890.

432 [Endorsed:] Supreme Court of the United States. Syracuse Water Company, pl'ff in error, ag't City of Syracuse, def't in error. Syracuse Water Company, pl'ff in error, ag't City of Syra-

cuse & Central City Water Works Company, def'ts in error. Certificate of questions involved. Wm. G. Tracy, att'y for pl'ff in error, Jerry Rescue Block, Syracuse, N. Y. June 21.

433 Supreme Court of the United States.

SYRACUSE WATER COMPANY, Plaintiff in Error,
ag't
CITY OF SYRACUSE, Defendant in Error.

SYRACUSE WATER COMPANY, Plaintiff in Error,
ag't
CITY OF SYRACUSE and CENTRAL CITY WATER WORKS COMPANY, Defendants in Error.

STATE OF NEW YORK, } *ss*:
Onondaga County, }

Claude L. Forbes, being duly sworn, deposes and says that he resides in the city of Syracuse, N. Y., and is over twenty-one years of age; that on the 10th day of May, 1890, he served the annexed citation on Louis Marshall, the attorney for Central City Water Works Company, the defendant in error, by delivering a correct copy thereof to and leaving the same with him personally at the law offices of Jenney, Marshall & Ruger, in the city of Syracuse and State of New York, and at the same time he showed to the said Louis Marshall the annexed original citation and the original signature of Wm. C. Ruger, chief judge of the court of appeals of the State of New York, attached thereto; and that upon the same day he served the annexed citation upon Edwin S. Jenney, attorney for City of Syracuse, defendant in error, by delivering a correct copy thereof to and leaving the same with the said Edwin S. Jenney at his office, in the city of Syracuse and State of New York, and at the same time he showed to the said Edwin S. Jenney the annexed original citation and the original signature of Wm. C. Ruger, chief judge of the New York court of appeals, attached thereto.

CLAUDE L. FORBES.

Subscribed and sworn to before me this 10th day of May, 1890.

CHAS. F. AYLING,
Notary Public, Onon. Co., N. Y.

(Endorsed:) Filed June 21, 1890.

434 Supreme Court of the United States.

SYRACUSE WATER COMPANY, Plaintiff in Error,
ag't
CITY OF SYRACUSE, Defendant in Error.

SYRACUSE WATER COMPANY, Plaintiff in Error,
ag't
CITY OF SYRACUSE and CENTRAL CITY WATER WORKS COMPANY, Defendants in Error.

STATE OF NEW YORK, *Onondaga County*, } *ss*:

Claude L. Forbes, being duly sworn, deposes and says that he resides in the city of Syracuse, N. Y., and is over twenty-one years of age; that on the 12th day of May, 1890, he served the annexed citation on William P. Gannon, the attorney for the City of Syracuse, N. Y., defendant in error, by delivering a correct copy thereof to and leaving the same with the said William P. Gannon at his office, in the city of Syracuse and State of New York, and at the same time he showed to the said William P. Gannon the annexed original citation and the original signature of Wm. P. Ruger, chief judge of the New York court of appeals, attached thereto.

CLAUDE L. FORBES.

Subscribed and sworn to before me this 21 day of May, 1890.

CHAS. F. AYLING,
Notary Public, Onon. Co., N. Y.

(Endorsed:) Filed June 21, 1890.

435 The United States of America to the city of Syracuse and the Central City Water Works Company and to the city of Syracuse, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next—1890—pursuant to a writ of error filed in the office of the clerk of the county of Onondaga, being the office of the clerk of the supreme court of the State of New York, wherein The Syracuse Water Company is the plaintiff in error and you are the defendants in error, to show cause, if any there be, why the judgments rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness Hon. Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 10th day of March, in the year of our Lord one thousand eight hundred and ninety.

WM. C. RUGER,
Chief Judge of the Court of Appeals of the State of New York.

WM. G. TRACY,
Attorney for Plaintiff in Error,
Jerry Rescue Block, Syracuse, N. Y.

(Endorsed:) Filed June 21, 1890.

435½ STATE OF NEW YORK, *County of Onondaga,* } ss.:

——— ———, being duly sworn, says that he is — the — in the above-entitled action; that he has heard read the foregoing — and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

——— ———.

Subscribed and sworn to before me this — day of ———, 189–.

——— ———.

436 [Endorsed:] Supreme court. Syracuse Water Company, pl'ff in error, *vs.* City of Syracuse, def't in error. Syracuse Water Company, pl'ff in error, *vs.* City of Syracuse & The Central City Water Works Company, def'ts in error. Citation & proof of service. Copy. W. G. Tracy, attorney for pl'ff in error, office and post-office address, 23, 24, and 25 Syracuse Savings Bank b'ld'g, Syracuse, N. Y. Due personal service of a copy of the within — is hereby admitted. Dated ——— —, ———. ——— ———, att'y for —.

437 Supreme Court of the United States.

THE SYRACUSE WATER COMPANY, Plaintiff in Error,
vs.
THE CITY OF SYRACUSE, Defendant in Error.

THE SYRACUSE WATER COMPANY, Plaintiff in Error,
vs.
THE CITY OF SYRACUSE and THE CENTRAL CITY WATER WORKS COMPANY, Defendants in Error.

Know all men by these presents that we, Alfred A. Howlett and John W. Truesdell, of the city of Syracuse, N. Y., are held and firmly bound unto the city of Syracuse and the Central City Water Works Company, and also to the city of Syracuse alone, their and its successors and assigns, in the sum of two thousand dollars; for which payment, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our executors and administrators, firmly by these presents.

Sealed with our seals and dated the 7th day of March, 1890.

Whereas the above-named Syracuse Water Company have prosecuted or are about to prosecute a writ of error to the Supreme Court of the United States to reverse the judgments rendered in the above-entitled actions by the court of appeals of the State of New York, a record of which has been heretofore remitted to and made the judgments of the supreme court of the State of New York:

438 Now, therefore, the condition of this obligation is such that if the above-named Syracuse Water Company shall prosecute their said writ of error to effect and, if they fail to make their appeal good, shall answer all damages and costs (including just damages for delay and costs on the appeal), then this obligation shall be void; otherwise to remain in full force and virtue.

A. A. HOWLETT. [L. S.]
JOHN W. TRUESDELL. [L. S.]

STATE OF NEW YORK, } ss:
County of Onondaga, }

On this eighth day of March, A. D. 1890, before me, the subscriber, appeared Alfred A. Howlett and John W. Truesdell, to me personally known to be the same persons described in and who executed the above undertaking, and severally duly acknowledged that they executed the same.

[L. S.]

T. J. LEACH,
Notary Public. [L. S.]

STATE OF NEW YORK, } ss:
County of Onondaga, }

Alfred A. Howlett and John W. Truesdell, being severally duly sworn, each for himself says: The said Howlett, that he is a freeholder of the county of Onondaga, in this State, and that he
439 is worth the sum of four thousand dollars over and above all debts and liabilities which he owes or has incurred, exclusive of property exempt by law from levy and sale under an execution; and the said Truesdell for himself says that he is a freeholder of the county of Onondaga, in this State, and that he is worth the sum of four thousand dollars over and above all debts and liabilities which he owes or has incurred, exclusive of property exempt by law from levy and sale under an execution.

A. A. HOWLETT.
JOHN W. TRUESDELL.

Severally sworn to and subscribed before me this 8th day of March, 1890.

[L. S.]

T. J. LEACH,
Notary Public. [L. S.]

I approve of the above bond and of the responsibility and sufficiency of the sureties therein named.
Dated March 8, 1890.

WM. C. RUGER,
Chief Judge of the Court of Appeals of the State of New York.

(Endorsed:) Filed M'ch 11, 1890.
440 [Endorsed:] Supreme Court of the United States. Syracuse Water Company, pl'ff in error, ag't City of Syracuse,

def't in error. Syracuse Water Company, pl'ff in error, ag't City of Syracuse and Central City Water Works Company, def'ts in error. Bond on writ of error. Onondaga county clerk's office, Syracuse, N. Y. Filed —. Copy.

Endorsed on cover: New York supreme court. No. 1208. The Syracuse Water Company, plaintiff in error, *vs.* The City of Syracuse and The Central City Water Works Company and The City of Syracuse. Filed July 7, 1890.